

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011 JMA-AYS

Plaintiffs,

**NOTICE OF
MOTION**

- against -

**Justice: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, Anne Y., M.J.)**

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

Submitted:

Defendants.

-----X

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed brief, dated the 25th day of June 2021,
and upon all papers filed herein, a motion will be made by the Defendants to this Court, the
Honorable Joan M. Azrack presiding at the courthouse located at 100 Federal Plaza, Central Islip,
New York 11722-4448 for 1) pursuant to Rule 56 of the Federal Rules of Civil Procedure,
summary judgment dismissing the Amended Complaint; 2) pursuant to Rule 56 of the Federal
Rules of Civil Procedure, summary judgment and/or pursuant to Rule 12(c) of the Federal Rules
of Civil Procedure for lack of service of process and failure to state a cause of action dismissing
the Complaint filed under Docket No. 2:21-cv-00014 and consolidated under this docket, and
dismissing the consolidated amended complaint and 3) alternatively compelling plaintiff John

Lepper to attend an additional 50-h hearing, compelling plaintiffs to attend an additional deposition and compelling discovery responses to demands to be prepared by defendants in the amended consolidated complaint and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, must be served within the time limits specified in the court ordered briefing schedule as entered by the Court on May 18, 2021.

Dated: June 25, 2021
Mineola, New York

Yours, etc.

KELLY, RODE & KELLY, LLP
Attorneys for Defendants
330 Old Country Road
Mineola, New York 11501
(516) 739-0400

By:



Eric P. Tosca (EPT1489)
Associate Attorney

To: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road, Suite 250s
Melville, New York 11747
(631) 450-2515

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN LEPPER and NOELLE LEPPER, individually
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VILLAGE OF BABYLON; and,
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Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

Defendants.

**AFFIRMATION IN
SUPPORT**

**Justice: Honorable
Joan M. Azrack (U.S.D.J.)
(Shields Anne Y., M.J.)**

Submitted:

-----X
Eric P. Tosca, an attorney admitted to practice before this Court, and the Courts of
the State of New York, hereby affirm and declare under penalty of perjury as follows:

1. I am an attorney duly admitted to practice law in the State of New York and the
United States District Court for the Eastern District of New York.

2. I am an associate in the firm of Kelly, Rode & Kelly, LLP, attorneys for the
defendants in this action.

3. I submit this affirmation in support of the defendants' motion for summary
judgment and motion to dismiss for the reasons set forth in the accompanying memorandum of
law and adopt the arguments in the memorandum of law as set forth fully herein. While any

motion to dismiss the complaint under Docket Number 21-cv-00014 was stayed by the order of this Honorable Court dated

4. We submit that this Honorable Court should grant the motion to dismiss the complaint, including dismissal of each and every cause of action and request for relief set forth in the plaintiffs' complaint, jointly and severally.

5. In support of the motion to dismiss the complaint, your affirmant refers to the following exhibits:

Exhibit A-Plaintiffs' Original Complaint;

Exhibit B-Plaintiff's Amended Complaint;

Exhibit C-Amended Answer of Defendants to Amended Complaint;

Exhibit D-Plaintiffs' Answer to Counterclaims.

Exhibit E-Complaint originally filed under Docket Number 2:21-cv-00014

Exhibit F-Answer to Complaint filed under Docket Number 2:21-cv-00014

Exhibit G-Amended Consolidated Complaint

Exhibit H-Answer to Amended Consolidated Complaint

Exhibit I-Pertinent Portions of Transcript of John Lepper

Exhibit J-Pertinent Portions of Transcript of Gerard Glass

Exhibit K-Pertinent Portions of Transcript of Stephen Fellman.

Exhibit L- Transcript of Ralph Scordino

Exhibit M-First Notice of Claim

Exhibit N-Second Notice of Claim

Exhibit O-Transcript of John Lepper's 50-h Hearing

Exhibit P-Pertinent Portions of Transcript of Deborah Longo.

Exhibit Q-Affidavit of Stephen Fellman

Exhibit R-Affirmation of Gerard Glass

Exhibit S-Affidavit of Suzanne Schettino

Exhibit T-Affidavit of Kevin Muldowney

Exhibit U-Affidavit of Deborah Longo

Exhibit V-Affidavit of Anthony Davida

Exhibit W-Attested Report of Joseph Danatzko, P.E.

Exhibit X-Zoning Board decision Baldauf family application for variance

Exhibit Y-letters from Linda Scordino's attorney regarding death certificate,

Facebook posting by John Lepper offering deposition transcripts

Exhibit Z-affidavit of Mayor Mary Adams

Exhibit AA-affidavit of Robyn Silvestri

Exhibit AB-affidavit of Jean Marie Parker

Exhibit AC-affidavit of Jennifer Lister

6. Defendants submit that the plaintiffs' pleadings set forth no viable or plausible cause of action against the Defendants. The complaint/amended complaint fails to state a cause of action to sustain any civil rights claims, injunctive relief, state tort law claims or a declaration concerning the constitutionality of the ordinance which plaintiff John Lepper was found guilty of violating in state village court. For the same reasons, the complaint filed under Docket Number 2:21-cv-00014 and the amended consolidated complaint. As to the these newly filed complaints, there are additional reasons to dismiss them or the newly asserted causes of action. Plaintiff has not served the original complaint under Docket No. 2:21-cv-00014 in accordance with proper service of process under the Federal Rules and new causes of action are alleged that are time

barred. Furthermore, as to the state-based claims, plaintiff willfully deprived the defendants with a 50-h hearing.

7. As fully set forth in our memorandum of law, the plaintiffs failed to state a cause of action in the original complaint and in the amended consolidated complaint. There is no basis to the plaintiffs' federal claims and no basis to the plaintiffs' state-based claims. Plaintiff John Lepper has sued independently in the new complaint. The complaint under docket 2:21-cv-00014 assert similar claims of civil rights violations drawn from the original amended complaint. However, Noelle Lepper and John Lepper and Noelle Lepper on behalf of their children have opted out of the that litigation, evincing an intent of Noelle Lepper and John Lepper and Noelle Lepper on behalf of their children to relinquish their claims. Aside from our arguments concerning their not have standing to sue in the first place, we submit that the claims by Noelle Lepper and the Lepper children should be deemed withdrawn.

8. Standing to sue or not, the claims are without basis in failing to plead a factual basis warranting dismissal of the claims on a motion to dismiss or warranting dismissal on summary judgment after a review of the record.

9. Plaintiffs' claims and tactics in litigating this case have been malicious against civil servants who have nothing more than enforce a code provision designed to protect the public and enforce a quality of life for which Plaintiffs concede was the very reason they moved to the Village of Babylon. (See Exhibit N, pages of Transcript of Noelle Lepper)

10. Demonstrated in Exhibit is the kind of litigation practice, in which Plaintiffs have engaged. The entire transcript of the late Mayor Scordino is attached. Questions were asked that turned out to be wholly irrelevant and immaterial. Ms. Scordino's health and the names of Ralph Scordino family members were raised for no reason. Insinuation of marital infidelity and

corruption was made without foundation and without demonstrating any relationship to the claims in this case. There were no more than a handful of questions that were material to the claims in this case. The same may be said of Stephen Fellman's deposition. Questions were raised about his family members, even as far removed as Mr. Fellman's stepmother.

11. The litigation strategy pursued by plaintiffs only underscores the lack of substantive merit to the plaintiffs' claims.

12. Specifically with reference to the complaint filed under Docket No. 2:21-cv-00014, there are new causes of action challenging the retention of Gerard Glass and claims of malicious prosecution based on dismissal of tickets issued to John Lepper based on technical procedural grounds. However, the dismissal of the tickets on procedural grounds does not provide a basis for any additional claims. The plaintiff also cites to subsequent permits issued for playhouse structures to other persons in the village to support the claims for unequal treatment.

13. Firstly, subsequent permits cannot be a basis for claims that accrued over two years before the permits were issued. Mr. Lepper is required to show that there is a basis for unequal treatment when he was denied a permit. The only structure that could conceivably come close is the application of Baldauf, which was denied because the elevated tree structure was too closed to the property line after a request for a variance was made to the Village. The Baldaufs were compelled to move their intended structure to another part of their property if they wished to proceed, which they did. That being the only factual basis to the claims renders any claim of unequal treatment void.

14. Secondly, the claims are otherwise repetitious and should be dismissed because of the prior action pending. Nonetheless, the omission of Ms. Lepper and the children from the new complaint demonstrate an intent to abandon their claims.

15. Thirdly, the new complaint suffers a jurisdictional defect. It was not served properly and as such the both the complaint under Docket No. 2:21-cv-00014 and the amended consolidated complaint must be dismissed. Lack of service was raised in our answers to both. Mr. Lepper served the complaint on a person employed by the Village and again separately on Gerard Glass at Mr. Glass' office. No other service was made, and no affidavit of service has been filed. Service by Mr. Lepper is improper since he is a party to the case. Service specifically on the Village must be served on the Village Clerk, which was not done. At the time service was made, Deborah Longo, Anthony Davida and Kevin Muldowney were no longer employed by the Village.

16. Addressing the merits of the new complaint, we submit that John Lepper lacks standing to bring the claim. He has not demonstrated that he was still a taxpayer in the Village and brings the challenge to Mr. Glass' employment alone in any event. Moreover, Mr. Glass is an attorney. The challenge to his engagement breaches the right of the Village to choose an attorney of its own choosing. Plaintiff has no standing to challenge the contracts that the Village makes. While we submit that there is no substantive merit to Mr. Lepper's claims, if he personally sustained damages, that could be redressed by a request for monetary relief.

17. We respectfully refer to the arguments in the attached memorandum of law addressing the legal merits to our defense to the multifaceted claims of the plaintiffs.

18. Joseph Danatzko, P.E., attested to his findings in his report of the inspection of July 31, 2020. The findings explain multiple problems with the safety of the tree house in violation of building standards and in violation state mandated safety code provisions. The claims of the plaintiffs are rendered moot by these findings. The tree house could never be issued a permit or a certificate of occupancy even if a variance could be secured regarding the proximity of the tree house to the street. Even if all contentions of the plaintiffs as asserted were credited, the tree house

could never receive approval since the tree house is structurally unsafe.

19. The amended consolidated complaint alleges that the defendants engaged in a conspiracy to report John Lepper to the fire department and to report Mr. Lepper to the police department. A report to the fire department because Mr. Lepper wore his uniform in public is not unlawful and not actionable. Plaintiff has no basis for an unlawful arrest. There is no allegation that any action was taken by the police department against Mr. Lepper. Nonetheless, the proof demonstrates that none of the defendants were involved in either a report to the police or the fire department. There is no evidence to support plaintiff's claims.


20. The defendants request attorney's fees and litigation fees from the plaintiff who asserts baseless claims against the Village. The conduct of the lawsuit as demonstrated by questions posed in the depositions were designed to harass and embarrass the defendants in this matter. A host of immaterial questions were posed particularly in the deposition that infringed into the witnesses' personal lives. A video was taken of each deposition by plaintiff's counsel. To make matters worse, Mr. Lepper offered copies of the depositions to anyone who wanted a copy on social media. The purpose of asking these questions was clearly designed to publicly reveal personal information asked at the depositions. We submit that sanctions should be imposed on the plaintiffs and their counsel and that attorneys' fees should be recoverable by the defendants in defending the claims pursuant to Section 54(d)(2) of the Federal Rules of Civil Procedure.

21. While we urge that the plaintiffs' complaints and amended complaints should be dismissed. In the event that this Honorable Court sustains any cause of action, the stay on discovery concerning damages should be lifted and Defendants should be permitted to question the plaintiff concerning the alleged damages from the allegations in the amended consolidated complaint. We are entitled to a deposition of John Lepper to ascertain his knowledge of allegations

cited in the complaint, his knowledge of reports made to the police department and the fire department, the amount of attorneys' fees he has been billed or paid, the terms of his attorneys' fees arrangement, his knowledge of Gerard Glass' representation of the Village, the reasons that he is the sole plaintiff in his 2021 summons and complaint, whether Noelle Lepper has relinquished her claims in the original complaint and his knowledge of other structures claimed in his amended consolidated complaint. We respectfully submit that Defendants should be granted leave to serve interrogatory and document demands in reference to the allegations in the allegations in the complaint filed in 2021.

WHEREFORE, it is respectfully submitted that the motion 1) pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment dismissing the Amended Complaint; 2) pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment and/or pursuant to Rule Rule 12(c) of the Federal Rules of Civil Procedure for lack of service of process and failure to state a cause of action dismissing the Complaint filed under Docket No. 2:21-cv-00014 and consolidated under this docket, and dismissing the consolidated amended complaint; 3) an order compelling plaintiffs to pay attorneys' fees expended in the defense of the actions brought against the Defendants; and 3) alternatively compelling plaintiff John Lepper to attend an additional 50-h hearing, compelling plaintiffs to attend an additional deposition and compelling discovery responses to demands to be prepared by defendants in the amended consolidated complaint be granted, and for such other and further relief as this Court may deem just and proper be granted in its entirety, together with such other and further relief as to this Court may deem just and proper.

Dated: Mineola, New York
June 25, 2021


Eric P. Tosca

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011 JFB-GRB

Plaintiffs,

RULE 56.1 STATEMENT

- against -

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

**Justice: Honorable
Joan M. Azrack, U.S.D.J.
(Shields Anne Y., M.J.)**

Submitted:

Defendants.

-----X
**DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

DEFENDANTS VILLAGE OF BABYLON, KEVIN MULDOWNEY, s/h/a KEVIN
MULDOWNEY, Village Trustee, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA,
s/h/i/a TONY DAVIDA, Village Trustee, MARY ADAMS, Mayor, s/h/a MARY ADAMS,
Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE
SCHETTINO, s/h/a SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS,
ESQ. s/h/a GERARD GLASS, ESQ., Village of Babylon Attorney; DEBORAH LONGO, s/h/a
DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official

capacity, file this Statement of Undisputed Material Facts In Support of Defendants' Motion for Summary Judgment pursuant to Rule 56.1 of the Local Rules for the United States District Court for the Eastern District of New York.

UNDISPUTED MATERIAL FACTS

1. John Lepper and Noelle Lepper own and owned for all times mentioned in their first Amended Complaint the house and property located at 59 Cockenoe Road in the Incorporated Village of Babylon in the County of Suffolk, State of New York. (Exhibit B, Exhibit I)

2. John Lepper and Noelle Lepper have two minor children who have resided for all times mentioned in the Amended Complaint at 59 Cockenoe Avenue in in the Incorporated Village of Babylon in the County of Suffolk, State of New York. (Exhibit I, pp. 1-10).

3. The property at 59 Cockenoe Avenue fronts two public streets, Cockenoe Avenue on one side and Wampum Road on the other. (Exhibit Q affidavit of Stephen Fellman and Exhibit W, affidavit of Joseph Danatzko).

4. John Lepper commenced construction of a wooden structure in a tree (for all times hereinafter mentioned as "the treehouse") on the property of 59 Cockenoe Road in or before May 2018.

5. Before starting the construction of the treehouse, John Lepper did not make an application for a permit. (Exhibit I, Exhibit Q affidavit of Stephen Fellman).

6. For all times mentioned in the Amended Complaint Stephen Fellman was and is the Village Inspection for the Incorporated Village of Babylon. (Exhibit Q, affidavit of Stephen Fellman)

7. Stephen Fellman was informed by Anthony Davida that there was a structure being built in a tree at 59 Cockenoe Avenue in the Village of Babylon. In his capacity of Village Building

Inspector, Stephen Fellman transmitted a letter in May 2018 advising John Lepper may require a permit for a wooden structure in the tree that did not have walls or a roof. (Exhibit Q, affidavit of Stephen Fellman, Exhibit V, affidavit of Anthony Davida).

8. John Lepper continued construction of the treehouse after the letter requesting that he talk to Stephen Fellman in May 2018 (Exhibit Q, affidavit of Stephen Fellman).

9. During construction of the treehouse, John Lepper went to Village Hall to obtain a permit for the treehouse on May 21, 2018 (Exhibit I, Exhibit I, Exhibit Q, affidavit of Stephen Fellman).

10. The permit application filed by John Lepper did not contain signed and sealed plans by a licensed professional engineer or architect. (Exhibit Q, affidavit of Stephen Fellman).

11. All or part of the treehouse is situated less than ten feet from property line on the Wampum side of the property at 59 Cockenoe Avenue in the Incorporated Village of Babylon. (Exhibit Q, affidavit of Stephen Fellman, Exhibit W, affidavit with report of Joseph Danatzko with photographs).

12. Specifically, the tree house is located 13 feet, 1 inch from the interior edge of the curb along Wampum Road and 4 feet, 6 inches from wood fencing adjacent to Wampum Road, and the centerline of the subject tree was located approximately 9 feet, 10-1/2 inches east and 25 feet north of the single familiar residence on the property. (Exhibit W, affidavit with report of Joseph Danatzko).

13. The treehouse was constructed from old timber from a boathouse owned by the Lepper family that had been destroyed in Superstorm Sandy (Exhibit W, affidavit with report of Joseph Danatzko, Exhibit I, 58-62)

14. Except that Mr. Lepper claims that the trees were healthy when they were pruned,

no inspection was done on the tree to determine the stability of the tree to support the tree house. (Exhibit I, pp. 58-62).

15. Mr. Lepper built the tree house and was not familiar with the Village zoning or building codes at the time he constructed the tree house. He also had no experience building a tree house with the exception of building a tree house when he was a boy. (Exhibit I, pp. 24-25, 58-60, 283-293).

16. The tree was constructed of wood that is not pressure treated wood. (Exhibit W, affidavit with report of Joseph Danatzko).

17. The lot area of the platform base of the tree house measures 111.7 square feet. (Exhibit W, affidavit with report of Joseph Danatzko).

18. The platform base of the tree house is 8 feet, 8 13/16 inches above grade level. (Exhibit W, affidavit with report of Joseph Danatzko).

19. There is electrical wiring to the tree house which is used in part to provide electricity to an outdoor light on the exterior of the tree house. There was no electrical underwriter's certificate for any electrical components in or on the tree house. (Exhibit W, affidavit with report of Joseph Danatzko).

20. The only means of ingress and egress from the tree house is to go through a window, which Mr. Lepper employs the use of a free-standing ladder. (Exhibit I, pp. 90-93; Exhibit W, affidavit with report of Joseph Danatzko).

21. On July 31, licensed professional engineer Joseph Danatzko inspected the tree house and found conditions in violation of building codes. He opined that there were unsafe conditions in the tree house. (Exhibit W, affidavit with report of Joseph Danatzko).

22. Tickets were issued by the Village of Babylon to John Lepper in connection with

his construction of the treehouse. (Exhibit R, affirmation of Gerard Glass).

23. John Lepper was told that he would need to obtain a variance for the treehouse and signed and sealed plans were required. (Exhibit Q, affidavit of Stephen Fellman).

24. John Lepper claims that Justice Court Judge Rafter directed John Lepper to stop work on the treehouse and unplug the light to the tree house on September 4, 2018. (Exhibit A, amended complaint, para. 66).

25. Though he lacked a permit and was told he needed a permit to construct the tree house, John Lepper continued construction on the treehouse. (Exhibit Q, affidavit of Stephen Fellman).

26. No tickets were issued to Noelle Lepper or the Lepper children. (Exhibit R, affirmation of Gerard Glass).

27. John Lepper did not apply for a variance with the Zoning Board of Appeals of the Village of Babylon. (Exhibit R, affirmation of Gerard Glass, Exhibit Q, affidavit of Stephen Fellman).

28. John Lepper did not seek any remedy before the Zoning Board of Appeals of the Village of Babylon contesting that a permit was not issued for his treehouse. (Exhibit R, affirmation of Gerard Glass).

29. Section 365-26 of the Code of the Incorporated Village of Babylon states:

A. No building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector. The Building Inspector shall require that the application for a permit and the accompanying plot plan, plans and specifications shall contain all information necessary to enable him to determine whether the proposed building addition or structural alterations or change of use to an existing

building comply with the provisions of this chapter and Chapter 171, Flood Damage Prevention, where applicable.

[Amended 10-24-2006 by L.L. No. 8-2006; 7-14-2015 by L.L. No. 5-2015]

B. No permit shall be required for a storage shed located on the same plot as a one- or two-family dwelling, provided that only one storage shed shall be located on such plot and that such storage shed shall be securely anchored to the ground, shall comply with the structural provisions of the New York State Uniform Fire Prevention and Building Code and shall comply with all other Village laws, rules and regulations. Any storage shed which, in the opinion of the Building Inspector, has become dangerous, unsound, unsafe or hazardous as a result of fire, neglect, disrepair, structural failure, collapse, vandalism or any other means shall be declared a public nuisance. Any such shed declared to be a public nuisance shall be removed in accordance with the Building Inspector's specifications.

C. Decks/patios; outdoor playgrounds and gyms.

[Added 9-9-1986 by L.L. No. 4-1986; amended 1-11-1994 by L.L. No. 1-1994]

(1) As used in this subsection, the following terms shall have the meanings indicated:

DECK/PATIO

A single- or multi-level open flat or roof-enclosed structure composed of wood, metal, masonry or similar material.

(2) Decks and patios over 18 inches in height shall conform to minimum setback requirements of the main structure. A building permit shall be required for a deck/patio which is 18 inches or more above the adjacent grade level.

(3) A building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet.

(Exhibit W, attested report of Joseph Danatzko)

30. The Plaintiffs did not serve their notice of claim upon the Village of Babylon thirty days or more before filing the summons and complaint in this action, Docket Number 2:18-cv-07011. (Exhibit A, summons and complaint; Exhibit M, first notice of claim).

31. Plaintiffs did not attend a 50-h hearing pursuant to New York's General Municipal Law before filing the summons and complaint in this action, Docket Number 2:18-cv-07011. (Exhibit A, Exhibit B).

32. The late Ralph Scordino was Mayor of the Village of Babylon served as mayor from 2020 until his death on October 29, 2020. (Exhibit L, pp. 165-172).

33. Robyn Silvestre served as Village Trustee from July 28, 2018 and still serves as Village Trustee. (Exhibit AA, affidavit of Robyn Silvestre).

34. Mary Adams served as Village Trustee from June 15, 2016 until she was inaugurated to the office of Mayor of the Village of Babylon on October 30, 2020. (Exhibit Z, affidavit of Mary Adams).

35. Kevin Muldowney served as Village Trustee and Deputy Mayor for all times alleged in the complaint until September 1, 2020 (Exhibit T, affidavit of Kevin Muldowney).

36. Anthony Davida served as Village Trustee from 2002 until December 31, 2020. (Exhibit V, affidavit of Anthony Davida).

37. Stephen Fellman has been employed by the Village of Babylon as Building Inspector since 1991. (Exhibit Q, affidavit of Stephen Fellman).

38. Gerard Glass served as Village Attorney from 2018 until April 5, 2021. (Exhibit R, affirmation of Gerard Glass).

39. Deborah Longo had been employed by the Village of Babylon from 2008 until August 1, 2020. (Exhibit U, affidavit of Deborah Longo).

40. Suzanne Schettino had been employed by the Village of Babylon from 1997 until April 29, 2021. (Exhibit S, affidavit of Suzanne Schettino).

41. While constructing the tree house, John Lepper was aware that no permit was

issued and he continued to build the tree house expecting that a stop work order would be issued because no permit was issued. He understood that the “acceptance” of the permit application by Deborah Longo was not an approval of the permit application, but rather it would be taken for review. (Exhibit I pp. 270-271, 303, Exhibit U, affidavit of Deborah Longo)

42. John Lepper claimed that he defended his case in the Justice Court asserting that the building code did not apply to him because the structure was under 90 square feet. (Exhibit A, plaintiffs’ amended complaint, para. 71).

43. In a video recorded interview on November 2018 with *Newsday*, John Lepper told the reporter that he and his family used the tree house as a chapel, named the GFY Chapel, the Good For You Chapel. He considered the issue one of religious freedom. (Exhibit I, pp. 160-178).

44. John Lepper reportedly made the statement to *Newsday* to protect his rights and he had no attorney at the time he made the statement. (Exhibit I, pg. 174).

45. John Lepper never had personal discussion about the issues of the treehouse with Mayor Ralph Scordino. (Exhibit I, pp. 307-313).

46. Before Mr. Lepper was told he needed a permit for the treehouse, another family seeking to build a structure in a tree was told that a permit was needed (Exhibit Q, affidavit of Stephen Fellman).

47. The owners of the Baldauf tree house were not granted a permit and were required to apply to the Zoning Board of Appeals and were required to submit signed sealed plans and a survey by a licensed surveyor in order to apply for a variance with the Zoning Board of Appeals. Their application for a variance for the tree house in violation of the setback requirements was denied. (Exhibit X, Exhibit Q, affidavit of Stephen Fellman).

48. Stephen Fellman had issued permits to the Leppers for work performed on the

Lepper home before the tree house was built. (Exhibit Q, affidavit of Stephen Fellman).

49. Stephen Fellman's purpose for contacting John Lepper regarding the subject tree house was to enforce the Code of the Village of Babylon. (Exhibit Q, affidavit of Stephen Fellman).

50. John Lepper was never told by any of the originally named defendants that they objected to his making complaints about any drugs problems in the Village of Babylon. (Exhibit I, p. 361).

51. John Lepper handed a copy of the summons and complaint under Docket Number 21-cv-00014 to someone other than the Village Clerk at Village Hall. John Lepper handed a copy of the summons and complaint under Docket Number 21-cv-00014 to someone in Gerard Glass' office and not to Gerard Glass. No other summons and complaint under Docket Number 21-cv-00014 was served by John Lepper or on his behalf. (Exhibit R, affirmation of Gerard Glass).


52. John Lepper offered on social media to provide copies of video depositions of the defendants that were taken in the instant action. (Exhibit Y)

Dated: June 25, 2021
Mineola, New York

Yours, etc.

KELLY, RODE & KELLY, LLP
Attorneys for Defendants
330 Old Country Road
Mineola, New York 11501
(516) 739-0400

By:


Eric P. Tosca (EPT1489)
Associate Attorney

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

JENNIFER LOMONACO, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside at Mineola, New York.

On the 25th day of June 2021, I served, a true and correct copy of the within Memorandum of Law in Support and Motion for Summary Judgment, Dismissal, Compel Discovery, Table of Contents, Table of Authorities and Notice of Motion and all exhibits and attorney affirmation by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed each of the following persons at the last known addresses set forth each name:

LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road, Suite 250s
Melville, New York 11747
(631) 450-2515


JENNIFER LOMONACO

Sworn to before me this
25th day of June 2021

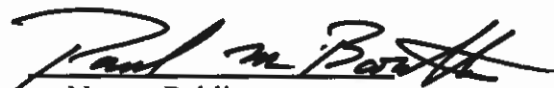

Notary Public



EXHIBIT “A”

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U.S. DISTRICT COURT E.D.N.Y.

United States District Court
Eastern District of New York DEC 10 2018 ★
LONG ISLAND OFFICE

CV 18 7011

JOHN LEPPER AND NOELLE LEPPER, individually and as
parents and natural guardians of their infant children,
B.J.L. and B.I.,

Plaintiffs

-against-

*Plaintiffs Demand
a Jury Trial*

VILLAGE OF BABYLON;

RALPH SCORDINO, Mayor, **KEVIN MULDOWNEY**, Deputy
Mayor, **ROBYN SILVESTRI**, Village Trustee, **TONY DAVIDA**,
Village Trustee, **MARY ADAMS**, Village Trustee;

BIANCO, J.

STEPHEN FELLMAN, Village of Babylon Building Inspector;

BROWN, M. J.

SUZANNE SCHETTINO, Department of Public Works; **GERARD**

GLASS, Esq., Village of Babylon Attorney; **DEBORAH LONGO**,
Planning Board, Village of Babylon, AND

JOHN AND JANE DOE (municipal agents, employees,
consultants and/or independent contractors) **##1-10** who might
be further identified in further prosecution of this claim,

Defendants

VERIFIED COMPLAINT

CORY H. MORRIS

LAW OFFICES OF CORY H. MORRIS

Attorney for Plaintiffs

VICTOR JOHN YANNAcone, JR., of counsel

PRELIMINARY STATEMENT

1. This is a civil action seeking monetary relief, a declaratory judgment, compensatory and punitive damages, disbursements, costs and fees for violations of the Plaintiffs' rights, abuse of process, negligent and/or intentional infliction of emotional distress, and negligence, brought pursuant to 42 U.S.C. §§ 1983, 1985 and 1986, the First, Fourth, Fifth, Eighth and Fourteenth Amendment to the United States Constitution and New York State Law.
2. Specifically, the Plaintiffs, John Lepper, Noelle Lepper, individually and as the parents and guardians of their infant son, B.J.L., and daughter, B.L., collectively referred to herein as the "Lepper family," allege that the Defendants, jointly and severally, individually and collectively, negligently, wantonly, recklessly, intentionally and knowingly sought to and did wrongfully deprive them of their Constitutional rights, pursuant to the above-mentioned statutes and causes of action by committing acts under color of law and depriving the Plaintiff of rights secured by the Constitution and laws of the State of New York.
3. Defendant Village of Babylon was negligent in training, hiring and supervising its Building Inspector, Defendant Stephen Fellman ("Fellman").
4. Defendant Village of Babylon was deliberately indifferent to the need to train its Building Inspectors (inclusive of Fellman) to issue legal process in a fair manner and not for the purpose of, among other things, silencing or retaliating against dissent(ers) or those who critiqued the Village of Bablyon.
5. Accordingly, Defendant Village of Babylon is liable to the Plaintiffs for abuse of process, malicious prosecution, and for conspiring to condone and encourage such civil rights violations and for conspiring to violate Plaintiffs' Civil Rights.
6. As a result of the Defendants' actions (or lack thereof), Plaintiffs emotional scarring and suffering, and incurred significant cost and expenses due to the Defendants' actions, including but not limited to: substantial legal fees, loss of good name and standing in the community, emotional distress and other cost/expenses.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331 and 1343.
8. This Court is requested to exercise supplemental jurisdiction with respect to Plaintiff's State Law claims pursuant to 28 U.S.C. §1367.
9. Venue in the Eastern District of New York is proper under 28 U.S.C. § 1391, based on the fact that the place where the events and violations herein alleged occurred was in Suffolk County, New York.
10. A Notice of Claim was filed on December 7, 2018 and Plaintiffs intend on amending this Complaint to comply with the timeliness requirements of the New York General Municipal Law § 50.

ADMINISTRATIVE PROCEEDINGS AND TIMELINESS

11. This action has been commenced within the three-year statute of limitations applicable to federal civil rights actions brought pursuant to 42 U.S.C. §§ 1983, 1985 and 1986.

PARTIES

12. Plaintiff, JOHN LEPPER is a citizen of the United States, a United States Marine veteran and resides at 59 Cockenoe Avenue, in the Incorporated Village of Babylon, Suffolk County, New York.
13. Plaintiff, NOELLE LEPPER is a citizen of the United States, a United States Marine veteran and resides at 59 Cockenoe Avenue, in the Incorporated Village of Babylon, Suffolk County, New York.
14. John Lepper and Noelle Lepper his wife are the lawful owners of 59 Cockenoe Avenue, a corner lot of 7,575 square feet (0.1739 acres) with 50.50 feet frontage along Cockenoe Avenue, a 50 foot public roadway, and 150 feet frontage along Wampum Road, a 33 foot public roadway. in the Incorporated Village of Babylon, in the Town of Babylon, Suffolk County, New York and identified on the Suffolk County Tax Map as parcel 0102-004.00-01.00-100.00. The property appears in its present configuration as Lots 19B & 19C in

Block F as shown on Map of Sampwam Park--Annex filed on October 31, 1921 as Map No: 758 in the Incorporated Village of Babylon, Town of Babylon, Suffolk County, New York (hereinafter referred to as the "Subject Property").

15. Infant B.J.L. is a six-year-old minor and the natural child born of the union of John Lepper and Noelle Lepper.
16. Infant B.L. is a five-year-old minor and the natural child born of the union of John Lepper and Noelle Lepper.
17. At all times relevant in this Complaint, and upon information and belief, DEFENDANT VILLAGE OF BABYLON, is a recipient of federal funding (whether directly or through the Town of Babylon) and was a recipient of federal funding at the time of the events complained of herein.
18. Defendant Village of Babylon is an incorporated Village located within the Town of Babylon in Suffolk County, New York.
19. Defendant Village of Babylon is governed by an elected Mayor and four elected Trustees, collectively the Babylon Village Board.
20. According to information posed on the Village of Babylon website at <http://www.villageofbabylonny.gov/> Defendant Ralph Scordino, is the duly elected Mayor, Defendant Kevin Muldowney, is the Deputy Mayor, and Defendants Robyn Silvestri, Tony Davida, and Mary Adams, are Village Trustees.
21. In the absence of Internet available information, upon information and belief, Defendant STEPHEN FELLMAN ("Fellman") is the Village of Babylon Building Inspector.
22. In the absence of Internet available information, upon information and belief, Defendant SUZANNE SCHETTINO, directs the Department of Public Works.
23. Upon information and belief, Defendant GERARD GLASS, Esq. ("Glass") is the Village of Babylon Attorney.
24. In the absence of Internet available information, upon information and belief, Defendant DEBORAH LONGO, is involved in administration of the Village of Babylon Planning Board.

25. JOHN AND JANE DOE (municipal agents, employees, consultants and/or independent contractors) ##1–10 who might be further identified in further prosecution of this claim.
26. All of the individual named Defendants are being sued in both their individual and official capacities.
27. Defendants Ralph Scordino, Kevin Muldowney, Robyn Silvestri, Tony Davida, Stephen Fellman, Deborah Longo, Suzanne Schettino, Gerald Glass and Mary Adams, are collectively referred to herein as “Defendants.”

THE FACTS

28. In April, 2018, Plaintiff, JOHN LEPPER, found a syringe, a hypodermic needle which he reasonably presumed to be utilized in illegal drug use, in his front yard when he was playing with his children. He informed his neighbors immediately and was outspoken in trying to find a remedy to shield his children from potential disease and harm caused by used hypodermic needles.
29. Defendants, and all of them, knew and came to learn either by direct knowledge, electronic mail correspondence or through various paper correspondence of John Lepper as a Village of Babylon resident who was outspoken regarding the crime occurring on his property and the greater problem concerning the use of illicit drugs, namely heroin, in the Village of Babylon.
30. On or about May 3, 2018, after conferring with Plaintiff NOELLE LEPPER, Plaintiff John Lepper began to utilize timbers from an old boat house that was destroyed in Superstorm Sandy to create a treehouse to insulate his children from the hypodermic needles he found in and around his property at 59 Cockenoe Avenue within the Village of Babylon.
31. The following Lepper family neighbors can see the treehouse from their property: Joe and Joanne Mineo and their sons M.M. and N.M.; Pay and Keirsten Murphy and their daughter G.; Kevin and Lyndsey and their children A. and S.; Joe and Katelyn and their two pre-school-age children, [redacted] all of whom live on

Cockonoe Ave; and Mike And Josephine Domingo and their three college-age daughters who live on Wampum Road.

32. By letter dated May 10, 2018, Village of Babylon Building Inspector Stephen Fellman informed Mr. Lepper that "It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit."
33. Upon information and belief, a single neighbor of John and Noelle Lepper made a complaint(s) to the Defendant Mayor Ralph Scordino who, again, disseminated this information regarding John Lepper to Defendants collectively.
34. Village of Babylon Code Section 365-26, section A, states: "No building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector. The Building Inspector shall require that the application for a permit and the accompanying plot plan, plans and specifications shall contain all information necessary to enable him to determine whether the proposed building addition or structural alterations or change of use to an existing building comply with the provisions of this chapter and Chapter 171, Flood Damage Prevention, where applicable."
35. Village of Babylon Code Section 365-26, section C, subsection (3) states "A building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet."
36. In response to the May 10, 2018 letter from Defendant Fellman, Plaintiffs stopped work on the treehouse for their children.
37. On or about May 21st, 2018, Plaintiff John Lepper visited the Building Department office of Defendant Village of Babylon; completed a building permit application and submitted a front

elevation / framing drawing with a copy of a recent survey of the Lepper Family Home.

38. The unidentified Building Department employee, "Jane Doe", to whom Plaintiff John Lepper submitted the application commented that she usually did not receive such a detailed drawing from homeowners to which Mr. Lepper explained that he had gone to Island Drafting and Technical Institution in Amityville.
39. While at the Village of Babylon Building Department on or about May 21, 2018, Plaintiff John Lepper spoke with another employee of Defendant Village of Babylon, Holly Zappala, and told her that a used hypodermic needle was found on his property, and other used hypodermic needles were being found in the area and that he had concerns for the well-being of his family.
40. Ms. Zappala told Plaintiff John Lepper that Defendant Village of Babylon was aware of drug-related crimes and the presence of hypodermic instruments prior to April, 2018 and that she and the Village of Babylon administration may be aware of criminal activity occurring on the subject premises and toward the Lepper Family.
41. This knowledge was evidenced by the relocation of a school-bus stop located within walking proximity of the Lepper Family residence to a distance away from a home that is known by the Defendants to be involved with illegal drug use/drug abuse and/or drug sale.
42. Upon information and belief, the Village of Babylon, Defendants collectively, did conspire to silence John Lepper by taking the building permit application without any intention of reviewing or approving such application and later issuing criminal legal process against John Lepper at a later date.
43. Defendants knew of John Lepper's intention to utilize this child's play set/gym, something he constructed in a tree, to address the public concern, protect his children and exercise his first amendment and liberty interests in directing the upbringing of his youth free from the scourge of dangerous hypodermic needles.

44. Plaintiff John Lepper, confident he was protecting his family and speaking out toward remedying the crime occurring on his property and the scourge of heroin in his community, spoke to and informed everyone present in the Village of Babylon building department on May 21, 2018 that it was his intention to build the treehouse for his son's birthday on July 7th, 2018 to allow his son the liberty and free use of the subject premises while maintaining a safe distance from the criminal activity in the neighborhood and the larger criminal narcotic problem known to the Village of Babylon.
45. Defendants, and all of them, knew of Plaintiff John Lepper's concerns and knew that he was complying with a legal process to which Defendants would never review and later use against Plaintiff John Lepper in a criminal proceeding.
46. On June 15, 2018, Plaintiff John Lepper called the Village of Babylon Building Department to check on the status of his application and was told by an unidentified employee, Jane Doe, that no determination had been made as to whether Mr. Lepper's treehouse was in violation of the town code.
47. Plaintiff John Lepper immediately ceased construction and assembly of the partially fabricated treehouse as soon as he had been ordered to do so by Building Inspector Fellman.
48. Determined to either delay construction of an innocuous and code-compliant treehouse solely for the benefit of minor children, or harass and intimidate the Lepper family by destroying their infant son's eagerly anticipated birthday present, the Defendants, jointly and severally, individually and collectively, refused to issue the appropriate building permit or withdraw the "stop work" order.
49. Within hours of his son's birthday, Plaintiffs John and Noelle Lepper decided to complete the treehouse and raise their children in the manner and safe-guard them from what he had already advised the Defendants was the scourge of drug abuse and the criminal activity known to be occurring in his neighborhood and already visited upon his property.

50. On July 19, 2018, Plaintiffs, received by certified mail three putative accusatory instruments that stated Mr. Lepper was in violation of Village of Babylon Code § 365-26 for construction of a treehouse without a permit.
51. Although sent in July, 2018, the Village of Babylon accusatory instruments bore May, 2018 dates.
52. Such certified mailing evidences not only the conspiracy between the above state actors, it evidences the abuse of process that would later be approved, in whole, by the Village of Justice Court as prosecuted by Defendant Gerald Glass.
53. In response, on July 19, 2018, Plaintiff John Lepper immediately visited the Village of Babylon Building Department to inquire about the three summons he had received.
54. Plaintiff John Lepper was told that he needed to make an appointment with Building Inspector Fellman and a meeting was scheduled for July 24, 2018.
55. Plaintiff John Lepper met with Defendant Building Inspector Fellman on July 24, 2018 and inquired as to the nature of the accusatory instruments after receiving no notice of action on his application or any notice that he was in violation of the Code for providing a treehouse for his children.
56. As Plaintiff John Lepper asked Defendant Building Inspector Fellman about each essentially identical citation which merely concluded that a "treehouse" violated Village of Babylon Code § 365-26 Defendant Building Inspector Fellman stated that Mr. Lepper owed \$250 for the first accusatory instrument, \$500 for the second accusatory instrument and \$1,000 for the third accusatory instrument.
57. Plaintiff John Lepper protested to Defendant Building Inspector Fellman that not only were such fines unwarranted and excessive but that no prior notice of any violation had been provided to the Lepper family.

58. Building Inspector Fellman told Mr. Lepper to resolve the matter in Court on August 14, 2018.
59. Defendant Building Inspector Fellman knew and operated with the approval of Defendant Ralph Scordino.
60. Upon information and belief, Defendant Fellman and Defendant Ralph Scordino conspired with the Defendants, and all of them, to be implicit in the use of fines to silence Village of Babylon citizens who were critical of Defendants, critical of the handling of crime within the Village of Babylon and addressing (or failing to address) the criminal activity reported on Plaintiff John and Noelle Lepper's property.
61. Building Inspector Fellman knew and had reason to know that Defendants, collectively, were able to utilize the Village of Babylon Code to raise revenue from its citizens by demanding money in lieu of Court Action.
62. Upon information and belief, Ralph Scordino did act and conspire with a private citizen who requested such fines to issue for the sole purpose of removal of the Lepper Family Treehouse prior to a review of the building permit or even the Village of Babylon town code.
63. Building Inspector Fellman and the Village of Babylon engaged in requesting and obtaining monies in response to the issuance of Village of Babylon violations.
64. Village of Babylon engaged in a pattern and practice of issuing Village of Babylon Code violations against persons to obtain monies knowing that the Village of Babylon Code criminalized either innocuous, ambiguous or innocent conduct.
65. Upon information and belief, Defendant Village of Babylon is more concerned with punishing taxpaying residents and extorting unconscionable fines from them for questionable violations of obscure and arcane, vague and ambiguous ordinances extracting fines out of law abiding resident property owners than providing

municipal services such a promptly processing an application for a building permit.

66. Defendant Ralph Scordino knew and had reason to know that Village of Babylon employees conducted themselves in a manner to extract fine money under the threat of legal process and arrest, from alleged building violations to smoking at the Village of Babylon train station.
67. Defendant Ralph Scordino knew and had reason to know that Defendants, all of them, conducted themselves in a manner to extract fine money under the threat of legal process and arrest, from alleged building violations to smoking at the Village of Babylon train station.
68. Among the parents and children who visited the Treehouse prior to August 14 hearing were: Joe and Joanne Mineo and their sons, M.M. age 14 and N.M. age 16; , Pat and Kirsten Murphy and their daughter G.M., age 7; Terri McSweeney and Cindy McSweeney with E.M., age 7 and P.M., age 5; Steve Kazda and Amanda Kazda and their sons, J.K., age 6 and J.K. age 4; Mike Columbia and Christina Columbia and their daughters, C.C., age 6 and C.C., age 4; Mike Pagamo and Doreen Pagamo and M.P., age 8 and M.P., age 6; Charlie Lepper and Deena Lepper and their children, J.L., age 14; J.L., age 10, and C.L., age 8; George, age 93, a WWII veteran and Barbara

THE VILLAGE OF BABYLON TRIAL

69. Plaintiff John Lepper who is a New York City firefighter sought an adjournment of the hearing from the afternoon session of the Court to the evening session in order for him to attend a memorial service for a brother firefighter who had died of illnesses from service at the 9/11 scene. Village Judge John T. Rafter denied the request and Firefighter Lepper was forced to leave the Memorial service before it was completed, arriving in Court at precisely 1400 hours still in his Class A uniform.

70. Village Judge John T. Rafter and Defendant Gerard Glass, the Babylon Village attorney acting as the prosecutor both knew that Mr. Lepper was unrepresented by counsel, and that he was facing fines which might amount to \$1,750 together with court costs and the possibility of continued and continuing prosecution, yet at no time did Village Judge Rafter or Village Attorney Glass ever warn the Defendant or advise him not only of his right to counsel, but because of the questionable nature of the charges and the circumstances of the prosecution the real need to consult an attorney before proceeding any further in his own defense.
71. Upon information and belief, the wife of Village Judge John T. Rafter works with the complainant who instigated the prosecution of the Lepper Family for erecting a treehouse for their children and the children of the neighborhood.
72. Upon information and belief, the complainant who instigated the prosecution against the Lepper Family did influence Defendants for the purpose of silencing John Lepper.
73. Upon information and belief, Defendants, all of them, utilized the complainant to, among other things, extract monies from John Lepper, to watch him pain and endeavor to build such play set/gym for his children without acknowledging his permit application only to threaten to issue John Lepper daily fines for the same.
74. On or about August 14, 2018, Stephen Fellman, as Babylon Village Building Inspector wrote to Mr. Lepper declaring that "Per Section 116 Unsafe Structures of the International Building Code the tree house at the above referenced premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy is issued."
75. There is no evidence that the Village of Babylon ever adopted the International Building Code nor incorporated its Section 116 as part of the Village of Babylon Code.
76. Defendant Village Attorney Glass requested an adjournment of the hearing scheduled for September 4, 2018 and Village Judge Rafter adjourned the case to September 18, 2018.

77. On September 18, 2018, Village Judge Rafter learned that the office of Defendant Village of Babylon Mayor had received a complaint regarding John Lepper.
78. Village Judge Rafter never informed Mr. Lepper, who was appearing *pro se* without benefit of counsel, of his rights to receive information about the complaint and the complainant; his right to challenge the accusatory instruments that merely stated "Tree House" and were unsigned as legally insufficient.
79. Nevertheless, Village Judge Rafter did inquire of Mr. Lepper, *pro se*, about his efforts at complying with the Village of Babylon Code § 365-26 and the permit application which Mr. Lepper voluntarily filed.
80. Mr. Lepper informed Village Judge Rafter that his building permit application was accepted by the employees of the Village of Babylon Building Department.
81. The following interaction took place between Mr. Lepper and Village Judge Rafter during the purported trial against Mr. Lepper (hereinafter referred to as "Village of Babylon Court Proceeding"):
"JUDGE RAFTER: Okay . Did you have an understanding of what the purpose of the permit is?
MR. LEPPER: Yes sir .
JUDGE RAFTER: What was your understanding of what the purpose of the permit was?
MR. LEPPER: A construction permit was required for a structure being put up according to building code 365-26 it's not required for under 90 square feet. And I explained that to Mr. Fellman .
JUDGE RAFTER: I will interpret the code, sir .
MR. LEPPER: Okay .
JUDGE RAFTER: Neither you nor Mr. Fellman will interpret the code."

82. Already, Village Judge Rafter was imputing fault on the *pro se* Defendant, John Lepper who had attempted to comply with what was a patently vague and ambiguous ordinance.
83. In the Village of Babylon Court Proceeding, the following question and answer ensued:
- “JUDGE RAFTER: Did you have an understanding of that before you undertook the construction?
- MR . LEPPER: Not exactly, sir. Because I did not think that a permit was required for what I was putting up.”
84. Village Judge Rafter continued to make the case for the prosecutor, Defendant Village Attorney Glass, who at no time objected to the line of inquiry of the accused, Mr. Lepper.
85. In the Village of Babylon Court Proceeding, the following question and answer ensued:
- “JUDGE RAFTER: Did you contact the building department before you began construction or even contemplated construction of a tree house?
- MR. LEPPER: Yes. On the 19th when I submitted the application. Prior to the platform no , sir. I did not think a permit was required for a tree house. I was not sure.”
86. Rather than credit the sworn testimony of John Lepper. A *pro se* Defendant, and presumed innocent until proven guilty beyond reasonable doubt, Village Judge Rafter continued to push the burden onto Mr. Lepper who provided sworn evidence that he submitted a permit application prior to construction and prior to the issuance of any accusatory instrument by Village of Babylon.
87. In the Village of Babylon Court Proceeding, the following question and answer ensued:
- “JUDGER RAFTER: What is the basis of your objection?
- MR . LEPPER: That was submitted on May 19th after I received the letter from Mr. Fellman regarding construction of the tree

house without a permit. That was accepted by the office upstairs on May 19th and it was complete.

JUDGE RAFTER : You note there is no date on this. Do you have any proof as to when it was received?

MR . LEPPER : I was given a copy of the drawing I made and the survey that it was received ."

88. Determined to convict the *pro se* Defendant John Lepper, Village Judge Rafter interrupts Defendant Village Attorney Glass when questioning Defendant Building Inspector Fellman during the trial about Mr. Lepper's contention that the Lepper Family Treehouse did not require a permit.

89. In the Village of Babylon Court Proceeding, the following question and answer ensued:

"MR. GLASS: Mr. Fellman, it's your contention that under the Babylon Village code 365-26 there was no building permit for this structure -- this tree house, correct?

MR, FELLMAN: Correct.

MR. GLASS: Is there any provision of the Babylon Village code that would exempt one in the Village of Babylon from having to obtain a building permit based up on the facts you have testified to?

JUDGE RAFTER: Mr. Glass , I think that calls for a conclusion of law. So I am not going to permit him to answer that.

MR. GLASS: Okay. I have nothing further .

JUDGE RAFTER: You can ask in his opinion as a violation of the code and then set forth the facts upon which he bases his opinion. And then I would make the ultimate determination.

MR . GLASS: Judge, perhaps this should be the question then. Is there any provision of the code that exempts tree houses from obtaining a building permit?

MR . FELLMAN: No .

MR. GLASS: Okay. I have nothing further judge."

90. Most telling is the testimony from Defendant Building Inspector Fellman that "we can issue violations every 24 hours."
91. Defendants threat in open court would allow the Defendants to accrue such fines that would become a lien on John and Noelle Lepper's property should they not pay such fine.
92. Defendants, all of them, worked together to create such an ambiguous condition that must result in either the removal of the Lepper Family Treehouse or the removal of the Plaintiffs, completely, due to excessive daily fines for literally the presence of the Lepper Family Treehouse.
93. Defendants, collectively and independently, did act in such a matter to silence Mr. Lepper's complaints about the used hypodermic needles on his property and the concern for safety within the Village of Babylon.
94. Defendants, collectively and independently, knew and had reason to know that, although novel, Mr. Lepper created this treehouse in response to a health hazard and continued crime on and around his property.
95. Defendants worked together, by issuing legal process, refusing a permit and omitting their true intentions by mail correspondence, to create a condition that would harm not only Mr. Lepper by issuing of such summons, but harm his ability to raise his children in a manner he saw fit and in a manner free from the illegal drug use occurring on and around his property.
96. Defendants worked together to deny free use of Mr. Lepper's property by utilization of an overbroad statute and ignoring the expansive subsection that would allow the construction of the Lepper Family Treehouse.

THE VERDICT AND THE AFTERMATH

97. Village Judge Rafter convicted John Lepper by Order dated October 17, 2018 yet, as was stated on the record on November 20, 2018, did not recuse himself or allow further inquiry into his wife's relationship with the complainant who, upon information and belief, submitted a complaint against the Lepper Family Treehouse.
98. In his decision Village Judge Rafter stated that the "testimony of Stephan Fellman...established that he visited the premises in question on May 9, 2018, following receipt of a complaint in the Mayor's office that a treehouse was being constructed," yet no such complaint was ever shown to Mr. Lepper although he requested a copy on several occasions, nor was it produced during the trial.
99. On or about October 17, 2018, after a trial singularly deficient in the procedural due process which should have been afforded a pro se defendant in a quasi-criminal proceeding, Mr. Lepper was found in violation of Section 365-26 of the Village of Babylon Code based upon a reference by Hon. John T. Rafter to the Merriam-Webster definition of a building without any citation to the edition and year of publication of that dictionary or explanation of whether it had ever been adopted as an element of the Village of Babylon Code.
100. The Order by Village Judge Rafter finding John. Lepper in violation of Section 365-26 of the Village of Babylon Code required Village Judge Rafter to use a definition of building from a dictionary since it was not defined in the Village of Babylon Code: "The Merriam-Webster Dictionary defines a building as follows; A structure that is designed or intended for support, enclosure, shelter or protection of persons, animals or property having a permanent roof that is support by columns or walls."
101. Without referring to the remaining provisions of the Village of Babylon Code governing children's play gyms and the expansive use of "any combination," Judge Rafter states "The Court hereby specifically finds that the treehouse in question constituted a "building" within the meaning of the subject Code section."

102. In that same October 17, 2018 Order finding Mr. Lepper in violation of Section 365-26 of the Village of Babylon Code Village Judge Rafter states, "it is noted that the Notice of Violation is not signed by any representative of the Village of Babylon."
103. On October 17, 2018, after the Order of Village Judge Rafter was delivered by code enforcement, John Lepper went to Village Court to inquire about an appeal.
104. The next day, October 18, 2018, Babylon Village Attorney Gerard Glass sent a letter to the Lepper Family, stating, in toto, that "As you know this office is counsel to the Village of Babylon. The Court has rendered its decision. Please let me know your intentions. Thank you for your attention and courtesies herein."
105. The day after Attorney Glass sent his letter, and two days after the Order was issued, Building Inspector Fellman stated in a letter that, "On October 17, 2018 Village Justice John Rafter found you guilty of each offense listed on various summonses you received regarding the construction of a treehouse within your front yard setback. I, as Building Inspector, am ordering the continuation of the stop work order barring any further construction or occupancy of the tree house."
106. Building Inspector Fellman concluded his October 19, 2018 letter with the threat that the Lepper Family "must remove the tree house in its entirety or summonses may be issued on a daily basis."
107. Rather than allow the Lepper family sufficient time to appeal or seek counsel to elapse, the Defendants, jointly and severally, individually and collectively, did work together to injure the Plaintiff Lepper family; silence the Lepper family from speaking out about community problems, and did engage in an abuse of legal process to have Mr. Lepper remove the Lepper Family Treehouse.
108. Defendant Building Inspector Fellman did issue multiple additional accusatory instruments concerning the Lepper Family Treehouse on October 31, 2018.

109. On November 5, 2018, John Lepper paid the fines imposed on him by Village Judge Rafter in his October 17th Order.
110. On November 20, 2018, through counsel, Mr. Lepper asked the Court to enjoin the daily issuance of fines so that Mr. Lepper may resolve the new set of accusatory instruments against him on the merits but the Hon. John T. Rafter refused to do so.
111. On November 20, 2018, Defendant Glass argued and The Village of Babylon Justice Court agreed that the Court will not enjoin further fines.
112. After allowing your affiant to file an omnibus motion to dismiss the criminal charges against Mr. Lepper, Village Judge Rafter refused any application to enjoin the Village of Babylon, the Defendants, from issuing daily fines against Mr. Lepper.
113. On November 20, 2018, Village Judge Rafter stated that "I have no intention of enjoining anyone, so that application is denied."
114. On November 21, 2018, John Lepper tried to obtain copies of exhibits that were missing from the trial on September 18, 2018. After waiting two hours he was denied copies.
115. The Village of Babylon Clerk stated to Mr. John Lepper that he could not obtain Court records.
116. After waiting for two hours, on November 21, 2018, the Village of Babylon Court Clerk stated to Mr. John Lepper that she had to "check" with Defendant Gerald Glass to see if she could release such Court records to John Lepper.
117. On November 27th 3:15pm, Mr. John Lepper filed a Motion to dismiss all accusatory instruments against him with letter from Attorney Cory Morris requesting copies of Village of Babylon Court exhibits from his previous conviction.
118. Only after legal instruction and a demand from an attorney was John Lepper able to obtain Court records for which he was legally entitled.
119. November 27th, 2018, John Lepper attended the Village of Babylon Board of Trustees meeting with Joe Mineo and Nick Montalto.

120. John Lepper did not speak out at the Village of Babylon Board of Trustees meeting because of the continued accusatory instruments, threat the treehouse would be removed and the threat of daily accruing fines for simply creating the Lepper Family Treehouse.
121. John Lepper, threatened with the prospect of daily fines, felt silenced, humiliated and unable to exercise his first amendment rights.
122. As a citizen and taxpayer of the Village of Babylon, Defendants silenced John Lepper by the issuance of such legal process and the continued threat of legal process against John Lepper.

ACTIONS OF DEFENDANTS COMPLAINED OF BY PLAINTIFFS

123. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments against Mr. Lepper in retaliation for his speaking out about matters of public concern in and around the Village of Babylon.
124. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments against Mr. Lepper to further the wishes of Defendants, collectively, for political purposes and in derogation of the constitutional rights of the Lepper Family.
125. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments to Mr. Lepper carrying criminal sanctions to the Lepper Family without allowing Mr. Lepper the opportunity to comply with or otherwise challenge the actions of the Village of Babylon,
126. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments to obtain monies and property for which Defendants were not entitled.

127. Defendants, jointly and severally, individually and collectively, knew and had reason to know that their actions were unjustified and without probable cause or even arguable probable cause.
128. Defendants, jointly and severally, individually and collectively, knew and had reason to know that their actions would cause harm to and inflict distress upon the Plaintiffs.
129. The Defendants, jointly and severally, individually and collectively, and the inability to obtain a fair trial continue to oppress the Lepper family and cast a cloud of criminality over their persons, home, and family.
130. Among the examples of the organized oppression of the Lepper family by the Defendants, jointly and severally, individually and collectively, has been the wrongful delay and outright refusal to provide Mr. Lepper with the exhibits from his trial before Village Judge Rafter.

EQUITY

131. Defendant Village of Babylon through the threats of Building Inspector Fellman continues to insist that the Lepper family tear down and completely remove their children's treehouse under threat of daily fines of up to \$1,000 each day.
132. The Lepper Family is in imminent danger of serious, permanent, and irreparable economic damage.
133. The Lepper family parents continue to live in fear that they will suffer serious economic punishment for a reasonable use of their own private property and their temerity in exercising their First Amendment rights by speaking out against the unconscionable actions of the Defendants in depriving the Lepper family of their liberty interest in raising their children as they see necessary which included trying to protect their infant children from exposure to hypodermic needles on the ground by building them a safe harbor in the air; and then retaliating against the Lepper family for speaking out.

134. The Lepper family The Lepper family Plaintiffs have no adequate remedy at law.
135. Upon information and belief, the Defendant Village of Babylon has not established any association between Village of Babylon Code Section 365-26 and the public health, safety and welfare of the residents of the Village of Babylon.
136. That there is no substantial credible evidence that the Lepper Family Treehouse represents a threat, much less a danger, to the health, safety, and welfare of the residents of the Village of Babylon.
137. Staying enforcement of the ordinance pending the resolution of this action and a declaration of the constitutionality and enforceability of Village of Babylon Code Section 365-26 will not cause any harm and/or damage to the residents of the Incorporated Village of Babylon.
138. The Lepper Family has made no other request for injunctive relief.

**PLAINTIFFS SEEK TO DECLARE VILLAGE OF
BABYLON CODE § 325-26 UNCONSTITUTIONAL**

139. Mr. Lepper seeks to enjoin the enforcement of the Defendant VILLAGE OF BABYLON Code as unconstitutional.
140. The elected officials, particularly the Village Judge, and all the employees, agents of, and consultants to the Incorporated Village of Babylon have a clear and unequivocal duty to all the resident property owners of the Village to assure them peaceful and quiet enjoyment of their homes and property according to the ancient and long standing maxim of at the heart of common law equity jurisprudence, *sic utere tuo ut alienum non laedas*, enjoining everyone to use their own property in such a way as not to injure that of another.
141. Defendant Village of Babylon seeks to limit the use of the Subject Premises.

142. Defendant Village of Babylon claims it has a right to restrict the erection of structures on private property that are less than 90 square feet.
143. Village of Babylon Code §326-26 can only be enforceable if it is a proper exercise of the police powers of the State by the Village of Babylon.
144. Village of Babylon Code §326-26 should be considered a zoning regulation by Defendants Village of Babylon.
145. To impose fines and even imprisonment for erecting a "building... on any lot, plot or premises" in the Village of Babylon "until a permit authorizing the same shall have been issued by the Building Inspector" (Village of Babylon Code §326-26.) without defining "building" and the phrase, "lot, plot or premises" creates a vague, ambiguous, and essentially meaningless ordinance.
146. Each of the accusatory instruments lodged against Defendant Lepper is based on the claim that erecting a treehouse of less than 90 square feet without a building permit or variance from the Zoning Board of Appeals is a violation of the Village of Babylon Code.

DEFENDANTS USE OF LEGAL PROCESS, FINES AND PROSECUTION IS DESIGNED TO SILENCE MR. LEPPER AND VIOLATES MR. LEPPER'S FIRST AMENDMENT'S RIGHTS

147. Defendants have constrained the ability of the Lepper family to create a treehouse for his infant children shortly after he spoke out against the criminal activity occurring within Village of Babylon.
148. Defendants knew and had reason to know that the Lepper family parents intended on building a treehouse to remove their children from and allow their children to play without the danger of contact with hypodermic needles on the ground which had been discarded from the street and public walkways onto the Lepper property.
149. Defendants knew and had reason to know that John Lepper spoke publicly and spoke out against the hypodermic needles found on

his property, crime in his community and the safety and wellbeing of his children.

150. In response to his identifying the problem of the hypodermic needles and their indication of a community drug problem and bringing the issues before the administration of the Village of Babylon, Defendants, individually and collectively, did conspire and act to deprive Mr. Lepper of his rights under the First, Fourth, Fifth, and Fourteen Amendment by ordering immediate and total removal of the treehouse he built for his children under the threat of continuing Draconian confiscatory fines and penalties.
151. Defendants, individually and collectively, did act to deprive Mr. Lepper of his rights under the First, Fourth, Fifth, and Fourteen Amendment while knowing and having reason to know that Mr. Lepper fully complied with the permit process of the Village of Babylon Code, and by obfuscating an already arcane and obscure administrative process cause injury to the Lepper family.
152. Rather than remedy the problem of drug abuse in the community or address the concerns Mr. Lepper expressed about the dangers of the discarded hypodermic needles which could have been addressed by Village of Babylon Code Enforcement, Defendants accepted the building permit which Mr. Lepper filed and the fee which he tendered without any intention of processing the application or even acknowledging its existence in their later prosecution in the Babylon Village Court.
153. Upon information and belief, Defendants did conspire and plan to issue accusatory instruments to Mr. Lepper with the ultimate goal of obtaining money, removing all remnants of a then unfinished treehouse, and punishing the Lepper family for exercising their constitutional rights.
154. On May 10, 2018, Defendants acknowledged that the treehouse did not violate any provision of the Village of Babylon Code by accepting the building permit application and fee.

155. Defendants concede that notice of all three violations which were each dated in May, 2018, were actually sent to Mr. Lepper in July, 2018.
156. Defendants delayed processing the Lepper family building permit for their children's treehouse and by failing to acknowledge and/or act upon the application, created a situation where fines would accrue against the Lepper family for lack of a permit and cause the Lepper family serious, permanent, and irreparable economic damage.
157. Defendants caused quasi criminal process to issue legal process against the Lepper family to silence the Plaintiff John Leffer and violate the civil and constitutional rights of the Lepper family.
158. Upon information and belief, the complainant at issue and the Village of Babylon Mayor did act and conspire with the Defendants to silence the Plaintiff Lepper family and remove their children's playhouse.

VILLAGE OF BABYLON CODE § 325-26 FORECLOSES AGE-APPROPRIATE PRIVATE RIGHTS OF ASSEMBLY AND ASSOCIATION ON ARBITRARY GROUNDS AND ARE THEREFORE TECHNICALLY CAPRICIOUS AS WELL AND CERTAINLY UNDERINCLUSIVE.

159. Plaintiffs have constitutionally protected liberty interests in their property.
160. Plaintiff John Lepper and Plaintiff Noelle Lepper have the right to establish a home and bring up children.
161. Plaintiff Noelle Lepper and Plaintiff John Lepper have the right to direct the upbringing and education of their infant children.
162. Plaintiff John Lepper and Plaintiff Noelle Lepper have the right and duty to nurture their children and direct their children's destiny.

163. Insofar as their children are concerned, Plaintiff John Lepper and Plaintiff Noelle Lepper have the right coupled with the high duty, to prepare their children for additional obligations.
164. A special respect for individual liberty in the home has long been part of our culture and our law.
165. That Defendants issued legal process to silence the Plaintiffs and to remove the Lepper Family Treehouse without reason to believe that the children's treehouse would have a negative impact on the public health and safety of the residents of the Village of Babylon and thereby violated the constitutional rights and liberty interests of the Plaintiffs without due process of law.
166. Defendants took action within the span of forty-eight hours to find Mr. Lepper guilty of a crime and then threaten daily fines if the treehouse was not removed, however, they still have not acted upon the permit application filed by the Lepper family.
167. The conviction of an unrepresented pro se John Lepper and the unjustified fines imposed by Village Judge Rafter were an unconstitutional attempt to silence Plaintiff John Lepper and intimidate him from speaking out against government ineptitude, the scourge of drugs, and his intention to do something about it on his own property.
168. Defendants actions in the prosecution of the Lepper family violated their civil and constitutional rights of the Plaintiff Lepper family, their liberty rights, and their rights to due process, enjoyment of property, freedom of assembly, and the ability to associate with one another on their property without the fear of government intrusion or reprisal.
169. Defendants violated the civil and constitutional rights of the Plaintiff Lepper family by the unsupported citation of the Lepper Family Treehouse as an unsafe structure in violation of the International Building Code without the basis therefore.

170. Defendant Building Inspector Fellman never presented any substantial credible evidence identifying the nature and manner he claimed the treehouse was an unsafe treehouse.

**DEFENDANTS ENGAGE IN A PATTERN AND
PRACTICE OF VIOLATING THE RIGHTS OF PERSONS
WITHIN THE VILLAGE OF BABYLON**

171. Defendants, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control Village of Babylon employees in issuing summons and observing the First Amendment rights of persons within the Village of Babylon.
172. Defendants, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control Village of Babylon employees that engaged in a pattern and practice of issuing legal process for the sole purpose of generating revenue.
173. Defendants, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control Village of Babylon employees who issued process without a legal basis therefore.
174. Defendants, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control Village of Babylon employees who did not consult the Village of Babylon code prior to issuing summons.
175. Defendants, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control Village of Babylon employees who directed legal process, investigation and inquiry into those who spoke out against the Village of Babylon or exercise political speech.
176. Mr. Lepper voiced concern over crime and used hypodermic needles on his property to Defendants, collectively and, at times, individually.

177. Mr. Lepper made his intentions to remedy what he saw as a pressing health and moral concern on his property known to all of the Defendants.
178. Defendants, collectively, did act to injure Mr. Lepper by the illegal use of legal process, summons and notices stating that "Treehouse" was illegal.
179. Defendants, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control Village of Babylon employees as to whether a "Treehouse" was an illegal use of one's property.
180. Defendants, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control Village of Babylon employees in the other section of Village of Babylon code that allows any combination of child play set and separates the definition of building from that code.
181. Defendants, jointly and severally, individually and collectively, knew and had reason to know that Mr. Lepper exercised his right to dissent on political issues within the Village of Babylon.
182. Defendants, jointly and severally, individually and collectively, knew and had reason to know that the violations visited upon Mr. Lepper were without legal basis yet allowed such violations to be issued and prosecuted.
183. Defendants, jointly and severally, individually and collectively, utilized that legal process against Mr. Lepper for the purpose of creating a situation where Mr. Lepper was forced to remove the Lepper Family Treehouse, destroying a child's birthday present and play set, or accrue daily fines.
184. Defendants, jointly and severally, individually and collectively, knew and had reason to know that the ambiguity in the Village of Babylon code and their refusal to respond to Mr. Lepper's legal inquiries would result in such a situation that could result in the leverage of daily fines.

185. Upon information and belief, within a year's time, such daily fines could exceed the property value of Plaintiffs' home.
186. Defendants exercised such process and utilized such process in a pattern and practice to the detriment of persons who speak out against the Village of Babylon.
187. Defendants inhibited a pattern and practice, a deliberate indifference to such practice and/or a custom, policy, trade or usage of issuing legal process to obtain such monies to which Defendants are not entitled and to silence speech, conduct and other innocuous behaviors within the Village of Babylon.
188. Here Defendants, jointly and severally, came together to harm Mr. Lepper.
189. Defendants conducted themselves in creating affirmative acts and failing to act to intervene in the violation of Mr. Lepper's constitutional rights.
190. Further, Defendants actions were calculated to harm the beneficiaries of Mr. Lepper's labor, his children, in the use of the Lepper Family Treehouse.
191. Defendants, collectively, operated to deny Mr. Lepper a fair opportunity to be heard or obtain an understanding of what was or what would not subject him to daily fines.
192. Defendants, jointly and severally, individually and collectively, acted and failed to act in accepting Mr. Lepper's building permit application and issuing vague and ambiguous letters that would later serve as the notice for legal violations to which Defendants issued to punish Mr. John Lepper.
193. Accordingly, Plaintiffs were damaged by Defendants, jointly and severally, individually and collectively, in their failure to adequately and properly train, supervise, manage, and control Village of Babylon employees from violating the constitutional rights guaranteed to persons within the Village of Babylon in its issuance of legal process, threats of criminal action, excessive and inappropriate fines and conspiring to harm such persons.

**PLAINTIFF JOHN LEPPER'S RIGHTS ARE BEING
VIOLATED BY THE THREAT AND ISSUANCE OF
CONTINUED FINES**

194. Village of Babylon Code Section 365-26 is criminal in nature.
195. The fines associated with Village of Babylon Code Section 365-26 are punitive, doubling and tripling and culminating in the demand for the removal of property without due process.
196. Such fines and threat of daily fine not only suppresses political speech but it is excessive under the 8th Amendment of the United States Constitution.
197. The actions of Defendants in enforcing Village of Babylon Code Section 365-26 against the Lepper family and threatening to continue enforcement with successive process and escalating fines and penalties for the very same conduct violate the Constitutional Rights of the Lepper family by subjecting them to repeated double jeopardy.
198. Mr. Lepper raised this issue before the Honorable John T. Rafter who ignored the issues, then convicted Mr. Lepper, an unrepresented, pro se defendant without any substantial credible evidence of guilt.
199. Honorable John T. Rafter not only stated that such daily fines were part of the Village of Babylon code but that the Village of Babylon Court would not enjoin anyone from issuing fines.
200. Accordingly, Mr. Lepper is without a remedy and seeks the jurisdiction of this Honorable Court to remedy such civil rights actions.
201. The accrual of multiple accusatory instruments, existing unfounded convictions of three violations and pending prosecution of further accusatory instruments establishes the imminent danger of serious, permanent, and irreparable economic damage and the likelihood that such danger will be continued based upon the sworn testimony of Defendant Building Inspector Fellman,

Plaintiff John Lepper and the Lepper family has been placed in jeopardy, repeatedly, for the same alleged criminal offense.

**PROSECUTION OF THE LEPPER FAMILY BY THE DEFENDANTS
IS AN UNCONSTITUTIONAL TAKING OF THEIR PROPERTY**

202. Village of Babylon Code Section 365-26 is unconstitutional:
203. Village of Babylon Code Section 365-26 as enforced by the Defendants against the Plaintiff Lepper family is unconstitutionally vague, overbroad, and violates the civil and constitutional rights of the Lepper family guaranteed to them under the First, Fourth, Fifth, and Fourteen Amendment of the Constitution.
204. Village of Babylon Code Section 365-26 fails to give Plaintiff John Lepper fair notice that building a treehouse of less than 90 square feet is forbidden by the Code.
205. Village of Babylon Code Section 365-26 does not provide guidance to ordinary homeowners as to whether building a treehouse for their infant children might be construed as a violation subjecting them to criminal prosecution.
206. Village of Babylon Code Section 365-26 encourages arbitrary and erratic arrests and convictions.
207. The accusatory instruments charging Plaintiff John Lepper with violating Village of Babylon Code Section 365-26 for building a treehouse for his infant children upon the malice and/or animosity of a neighbor.
208. Village of Babylon Code Section 365-26 fails to meet the fundamental principle of statutory construction for laws with criminal penalties, minimal guidelines to govern law enforcement.
209. As evidenced by the Kafkaesque prosecution and continued litigation over a treehouse for the infant Lepper children on their own property, Village of Babylon Code Section 365-26 allows law enforcement and local government to pursue their personal

animosity in violation of the civil and constitutional rights of the Plaintiffs.

- 210. Defendants actions, inactions and continued use of process against Mr. Lepper constitutes an unlawful taking under the United States Constitution.
- 211. Defendants threats to remove property under the threat of fine and legal process constitutes an abuse of process and violates Mr. and Mrs. Lepper's right to substantive and procedural due process.
- 212. Village of Babylon Code Section 365-26 has been utilized to obtain monies from Mr. Lepper under threat of continuing fines, liens on the Lepper family home, and/or jailing.

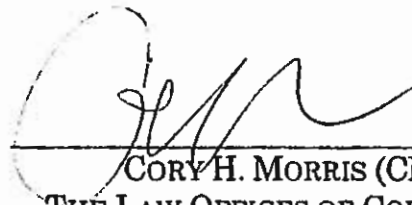
PRAYER FOR RELIEF

- 213. **Wherefore** Plaintiffs demand judgment demand judgment against the Defendants, jointly and severally, individually and collectively,
- 214. **DECLARING**, Village of Babylon Code Section 365-26 unconstitutionally infirm.
- 215. **DIRECTING** and imposing a mandate upon the Defendant Village of Babylon requiring said Defendant to correct all past violations of federal and state law;
- 216. **RESTRAINING** Defendants, jointly and severally, individually and collectively, from continuing to violate federal and state laws;
- 217. **PROVIDING** such other and further equitable relief as may be appropriate under the circumstances;
- 218. **APPOINTING** an independent monitor and/or receiver to supervise and monitor the efforts of Defendant Village of Babylon to remedy past injustices against and persons subject to illegal uses of process, threats of daily fines, threats of criminal conviction and civil rights violations due to the exercise of their first amendment rights.
- 219. **AWARDING** just compensation to the Plaintiffs as appropriate general and compensatory damages in an amount to be determined at trial;

220. **AWARDING** appropriate punitive damages sufficient to Defendants and other Village of Babylon employees for acting in retaliation to the dissent of local citizens and for their efforts in harming Mr. Lepper and his children by destroying one of the last vestiges of Americana and the limiting Plaintiffs' ability to raise their children in a manner they see fit;
221. **AWARDING**, pursuant to 42 U.S.C. § 1988, fair and reasonable attorneys fees together with the costs and disbursements and reimbursement of all the expenses incurred by the Plaintiffs and their attorneys in the prosecution of this action of this action;
222. All together with such other and further relief as to this Court shall seem just and proper under the circumstances.

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DATED AT Dix Hills, New York
December 6, 2018



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To: GERARD GLASS, Esq.
Babylon Village Attorney
On behalf of the Village of Babylon
153 West Main Street
Babylon, New York 11702

INDEPENDENT VERIFICATION

State of New York } ss:
County of Suffolk }

Noelle Lepper duly affirming under the penalty of perjury deposes and says that I am the one of the Plaintiffs filing this Verified Complaint and accompanying Order to Show Cause in the United States District Court, Eastern District of New York; that I have read the foregoing Verified Complaint and know the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief.

Duly affirmed under penalty of
perjury on December 6, 2018


NOELLE LEPPER

Sworn before me on the
6th of December, 2018


NOTARY PUBLIC

LINDA T. THYDEN
Notary Public, State of New York
No. 4947530
Resident in Eastern County
Commission Expires February 27, 2019

INDEPENDENT VERIFICATION

State of New York
County of Suffolk } ss:

John Lepper duly affirming under the penalty of perjury deposes and says that I am the one of the Plaintiffs filing this Verified Complaint and accompanying Order to Show Cause in the United States District Court, Eastern District of New York; that I have read the foregoing Verified Complaint and know the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief.

Duly affirmed under penalty of
perjury on December 6, 2018


JOHN LEPPER

Sworn before me on the
6th of December, 2018


NOTARY PUBLIC

LINDA T. THYDEN
Notary Public, State of New York
No. 4947550
Qualified in Nassau County
Commission Expires February 27, 2019

AFFIDAVIT OF JOHN LEPPER

State of New York }
County of Suffolk } ss:

JOHN LEPPER, being duly sworn, deposes and says:

1. Together with my wife Noelle Lepper I am the lawful owner of 59 Cockenoe Avenue, a corner lot of 7,575 square feet (0.1739 acres) with 50.50 feet frontage along Cockenoe Avenue, a 50 foot public roadway, and 150 feet frontage along Wampum Road, a 33 foot public roadway. in the Incorporated Village of Babylon, in the Town of Babylon, Suffolk County, New York and identified on the Suffolk County Tax Map as parcel 0102-004.00-01.00-100.00. The property appears in its present configuration as Lots 19B & 19C in Block F as shown on Map of Sampwam Park-Annex filed on October 31, 1921 as Map No: 758 in the Incorporated Village of Babylon, Town of Babylon, Suffolk County, New York.
2. I am writing this affidavit with the intent to try and explain why we decided to build our treehouse and what we were trying to accomplish by having it.
3. My wife and I decided that we were going to start our family in 2012. So we started looking for a home that would be suit our needs. We were moving from Amityville and always thought that Babylon was a perfect fit, beautiful friendly beach community with a lot to offer.
4. In May 2012 we closed on what we thought was the perfect house that we would eventually make our home. It was a beautiful two and a half story colonial built in 1924 or at least that's what I thought. My wife didn't have the same vision.
5. The house was beautiful but it was tired; meaning that it would need to be fully restored. So we reached out to an architect that we knew, gave him a few ideas of what we were looking for, and a month or so later we had our final drawings and filed for our construction permit.
6. We had to get a variance for the project because of an extension and wrap around porch. On July 7,2012 my wife and I were

blessed with our first child Bayden James Lepper. It was a great start to a new chapter of our lives.

7. Unfortunately October 29, 2012 when hurricane Sandy came through our area we like so many others in our area along the shore suffered a devastating loss. We were fully involved in the renovation of our new home at the time which was uninhabitable and the house we were renting was just washed out by hurricane Sandy.
8. We had almost four feet of water through the first floor of our house. So my wife and I took our four month old son and we moved into a hotel for the next six months.
9. A major setback but my wife and I were still looking forward and trying to stay optimistic still feeling so blessed from the birth of our son Bayden and the new home that we were building for our family. A lot of additional stress and financial hardship but we made it through putting it all behind moving into our new home in April 2013.
10. It's definitely taken a toll on us and as much as we don't like to talk about it I still feel that we haven't fully recovered from our losses yet. Probably because we were blessed again on October 27, 2013 with our daughter Brianna.
11. Now being somewhat settled in our new home I feel that I'm finally getting a chance to truly embrace being a father and it is by far the most rewarding thing that I have ever done. It has made me a better person and I was already pretty awesome. I feel that being a father truly made me a selfless person and there is nothing that I enjoy more than giving and spending ever minute that I have available with my family.
12. I think for myself and probably most parents when you bring someone into this world who didn't ask to be here who relies 100% on you for protection, guidance and unconditional love at the very least you can give that to them!
13. My most important goal in life since having my children is to hopefully live up to their expectations.
14. In May of 2016 our daughter Brianna was diagnosed with Gaushers Disease, a rare lysosomal blood disorder. The months leading up to Brianna's diagnosis were emotionally exhausting on

my wife and I. If you want to know what dying feels like it's when one of your kids is sick and you no one has an answer for what's wrong and all of the symptoms are pointing toward cancer. Thankfully that wasn't our diagnosis, Gaushers Disease type 1 was ours.

15. Brianna will live a pretty normal life and when I say pretty normal there are a lot of things now and in the future that we need to watch out for. My wife and I were bringing Brianna to Cohen's Children's Hospital weekly for the first year for her infusions.
16. After the first year we able to have a nurse come to our house and do the infusions at home which was good but emotionally draining for our four year old daughter.
17. Our daughter liked the nurses at Cohen's better. Thankfully my wife Noelle is a registered nurse and was able to be trained to do Brianna's infusions herself which is great but now it takes an emotional toll on Noelle. It's not easy to be a mother to the person you're supposed to be protecting but still have to be the one inflicting pain on a weekly basis for a two and a half hour infusion. That's more than enough for any family to have to endure.
18. Which brings me to the reasons for writing this letter. In April of 2018 While playing with my kids in the yard I saw what looked like a needle next to my fence. I went to get a closer look and to my surprise it was a needle in plain sight in a spot where my kids could have picked it up. I couldn't believe what I had just found in my bushes I took it in the house to show my wife and we notified a few of the neighbors of what we had just found. One of our neighbors told us that they had found the same thing by their house.
19. Being a member of the FDNY I'm well aware of the opioid epidemic but was still surprised and a little taken back to find something like that in our neighborhood. We choose this area to raise our family hoping to never see anything like this.
20. Anyway it happened. We found what we found and we moved forward with our eyes open a little wider. I spoke to my wife and told her that I would like to build the kids a treehouse and would like to try and have it done for Bayden's seventh birthday I had

vacation coming up and we just had our 150 year-old boathouse taken down in Amityville at the house that we previously rented from my mother so we were going to use the old heavy timbers and some of the old siding from it.

21. I started the project May 3rd 2018 and on May 10th we received a letter from the village of Babylon building inspector Mr. Steve Fellman stating that the structure that we were building might require a permit.
22. I stopped work on the treehouse and on May 21st I went to the village building department and filled out the building permit application and submitted a front elevation / framing drawing with a copy of a recent survey from our renovation of our home in 2012.
23. The woman that accepted it in the building department actually commented on the drawing that I submitted she said that she usually didn't receive such a detailed drawing from homeowners I explained to her that I had gone to Island Drafting and Technical Institution in Amityville where the building inspector Mr. Fellman has his architectural firm.
24. I had also explained why we had decided to build our treehouse to Holly Zappala one of the other women working in the building department office and a neighbor of ours and I told her what we had found in our bushes. She told me that she was aware of a few other incidents that had happened in the past and that she might have an idea of who might have left that needle in our bushes.
25. I had let everyone in the building department know that it was my intention to build the treehouse for our sons birthday on July 7th.
26. Somewhere around June 15th I called the building department to check the status of our application and was told that no determination had been made yet and I reminded whoever I spoke with that we were trying to build the treehouse for our sons birthday on July 7th.
27. Not hearing anything from the building department on June 30th I had already built the walls of the treehouse in our garage and erected the walls to show our son what daddy was doing in the garage for the past few days and to show him what we were trying to accomplish for his birthday.

28. The week of July 4th I expected to either receive a stop work order or our building permit. Not receiving either one I figured I would continue to work on the treehouse for our son until someone called or we received a stop work order or were issued our permit.
29. We never heard anything from the village until July 19th when my wife received a certified envelope with three violations in it the Violation said that we were in violation of Babylon Village Bldg Code 365-26 construction of a treehouse without a permit.
30. On July 19th I brought the envelope down to the building department to inquire about the violations and was told that I needed to make an appointment with Mr. Fellman the building inspector and he would explain what the violations were for.
31. The woman scheduled our meeting for July 24th at 3pm and when I meet Mr. Fellman on July 24 and asked what the violations were for as I pulled each one out of the envelope he was very curt as he started rattling off dollar amounts that I owed he said the first one was \$250, the second one was \$500 & the last one was a thousand.
32. My response to him was how could you expect anyone to pay for three violations for three separate day that all came in the same envelope.
33. Not allowing me any time to respond to the first violation. Never even receiving a Stop Work Order, Permit Application Denial letter or a Notice of Violation. So that pretty much how that meeting went and Mr. Fellman told me that he would see me in court on August 14.
34. I felt this was in retaliation for my views and opinions voiced publicly to the Village of Babylon concerning the crime that occurred on and around my property and concerning the greater issue of heroin use and crime in the Village of Babylon.
35. I left the building department with a copy of Babylon Village bldg. code 365-26 C. Decks/Patios; outdoor playgrounds and gyms. (3) A building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet.

36. The treehouse we constructed for Bayden is under the 90 square feet and does not require a permit. I felt pretty confident that this would be resolved on August 14th.
37. I also contacted an attorney who is a friend of the family to consult with him on the matter and also to ask him if he wouldn't mind requesting an adjournment to the later 7pm session on August 14 or possibly a later date as I had a plaque dedication for a friend and colleagues from the fire department who had died one year prior due to 9/11 related injuries.
38. That request was denied immediately! When I showed up to court on August 14th for court I had to leave my friends plaque dedication an hour after it started in Manhattan to make it on time to my 2pm court hearing. I made it at exactly 2pm still in my class A fire department uniform.
39. I was never informed of my rights as a pro se defendant and had no idea that I could be subject to such fines against my property that may result in the taking of my property.
40. At no time did I intend to break the law nor did I break the law.
41. I complied with the Village of Babylon code as it was written in constructing a tree house for the safety of my children and in response to the crime occurring on and around my property to which Defendants refused to address.
42. I feel that I was the subject of retaliation and am now the subject of a criminal prosecution for building a treehouse for my children.
43. The Village of Babylon, through its various employees and agents, have threatened to issue daily fines if I do not take the tree house down.
44. I never received a response to my permit application from the Village of Babylon.
45. It seems clear that the Village of Babylon, Defendants herein, have no intention of allowing me or my children to have a treehouse at our home.
46. The Village of Babylon, through the Defendants named herein and the Honorable John T. Rafter, have allowed and intend to allow daily fines to issue for building a play set/gym in the form of a treehouse for my children.

7

The above is a true and accurate statement sworn to me under the penalties of perjury.


JOHN LEPPER

Sworn to before me on
December 6 2018


Notary Public

LINDA T. THYDEN
Notary Public, State of New York
No. 4947550
Qualified in Nassau County
Commission Expires February 27, 20 19
Submitted by

CORY H. MORRIS (CM 5225)
Attorney for the Plaintiffs
email Cory.H.Morris@protonmail.com

To: GERARD GLASS, ESQ., *Village Attorney*
Village of Babylon
153 West Main Street
Babylon, NY 11702
email gg@glasslaw.com

AFFIDAVIT OF NOELLE LEPPER

State of New York }
County of Suffolk } ss:

NOELLE LEPPER, being duly sworn, deposes and says:

1. I am the wife of John Lepper and together with my husband I am the lawful owner of 59 Cockenoe Avenue, a corner lot of 7,575 square feet (0.1739 acres) with 50.50 feet frontage along Cockenoe Avenue, a 50 foot public roadway, and 150 feet frontage along Wampum Road, a 33 foot public roadway. in the Incorporated Village of Babylon, in the Town of Babylon, Suffolk County, New York and identified on the Suffolk County Tax Map as parcel 0102-004.00-01.00-100.00. The property appears in its present configuration as Lots 19B & 19C in Block F as shown on Map of Sampwam Park-Annex filed on October 31, 1921 as Map No: 758 in the Incorporated Village of Babylon, Town of Babylon, Suffolk County, New York.
2. John and I lived in Amityville for 8 years together. When we decided to start a family we knew Babylon was our first choice to buy a home and start a family. We believed Babylon village had everything a growing family wants a quiet safe community with great neighbors, excellent schools and amazing variety of restaurants and stores.
3. John and I wanted to be close to the village so we found a home for sale in the "indian section" on Cockonoe Ave. I was not happy with the home it was a 1920's colonial that needed a complete renovation. John told me he could turn this house into a home and to trust his "vision". I was skeptical, but knew he was an Amazing Contractor and Architect. John completed the renovation in April 2013 and made the house into a beautiful home for our family.
4. Cockonoe Ave and our surrounding streets are filled with hard working families who just like us are trying to raise their families with values like kindness, respect, and love. We have been blessed with two children Bayden who turned 6 in July and

Brianna who turned 5 in October. We live on a street with many young kids.

5. Our bus stop is in front of our house and we have 14 kids at our stop ages kindergarten to sixth grade.
6. In April of this year John was in the backyard with the kids playing on the hammock. John was pushing them and the kids were laughing and singing songs with each other. John suddenly got distracted, something caught his eye, it was a hyperdermic needle on the ground next to our fence post. It was in reach and aim of Bayden and Brianna. When John showed me what he found I immediately felt nauseous to my stomach. We notified our surrounding neighbors what we found and much to our surprise our neighbor Pat and Keirsten Murphy found a needle on their property as well.
7. We were horrified angry and most of all scared! How could we protect our kids if our own backyards aren't safe? It was then that John approached me with the idea ... He wanted to build Bayden a treehouse for his 6th Birthday. I knew John would build a safe and fun place for our kids to make amazing memories together. Growing up with a treehouse is every child's dream. It is a place where children can use their imagination to create endless adventures.
8. In May of 2018, John started building the platform for the treehouse. As Bayden and Brianna watched Daddy building the platform they immediately wanted to know what Daddy was doing? When he told them he was building a treehouse for them and he would have it ready for Baydens BD they were the happiest kids on the planet. They started telling everyone they knew and even people they didn't. Bayden would tell strangers he saw in the grocery store, "My daddy is building me a treehouse!" Their response was you're the luckiest boy in the world.
9. Soon all of the kids on the street found out and would come down to watch John build. Bayden and Brianna talked about the treehouse all day long. They were in school still and at the bus stop the parents told John my kid is so excited for the tree house to be built. That is all they talk about.
10. Bayden and Brianna talked about what games they would play in the treehouse they had it all planned: they were going to bring

their favorite board games Candy land and Chuks and Ladders, and Bayden was bringing his Po Kemon, Star Wars and Batman toys and Brianna was bringing her Barbies, Shopkins, and Her favorite hello Kitty house to play.

11. They asked me to buy them water guns so they could spray Daddy when he was mowing the lawn. One day when John was working on the treehouse. I took the kids to Phelps Lane Park where they have a pirates playground. When we left, I heard them talking in the back seat, Bayden told Brianna, "When Daddy finishes our treehouse we could play pirates in the treehouse!" Brianna's response was "Yeah it will be so much fun!" Yes it was all they talked about!
12. After the platform was done and John put the walls up Bayden and Brianna started getting more excited. They talked about how Bayden's Birthday party would be "The Best Party Ever!" Bay told John and I. Bayden said, "I can't wait to have all my friends come over and play in our treehouse, this will be the best day of my life!"
13. I have come to learn that because of my husband's building of the treehouse and his outspoken view regarding the heroin use in the Village of Babylon, he has suffered criminal accusations.
14. I have come to learn that the Village of Babylon intends on issuing daily fines if my husband does not remove the treehouse from the property.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

4

The above is a true and accurate statement sworn to me under the penalties of perjury.


NOELLE LEPPER

Sworn to before me on
December 6 2018


Notary Public

LINDA T. THYDEN
Notary Public, State of New York
No. 4947550
Qualified in Nassau County
Commission Expires February 27, 2019
Submitted by

CORY H. MORRIS (CM 5225)
Attorney for the Plaintiffs
email Cory.H.Morris@protonmail.com

To: GERARD GLASS, ESQ., *Village Attorney*
Village of Babylon
153 West Main Street
Babylon, NY 11702
email gg@glasslaw.com

JS 44 (Rev. 01/29/2018)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS John Upper, Joelle Upper
individually and as parents and natural
guardians of infant children BJ1 and BJ1
(b) County of Residence of First Listed Plaintiff
Suffolk NY
(c) Attorneys (Firm Name, Address, and Telephone Number)
Coyne Morris P.C., 35 West Whittemore
Suite 310, Dept Hills NY 11746, 631450-2515

DEFENDANTS Village of Long Island Office
Kevin Muldowney, John Silvestri, Tony David
Mary Adams, Stephen Ellman, Seane Scattino,
Gerard Glass, Deborah
County of Residence of First Listed Defendant Longo as
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED. John & Jane
Box #1-10
Attorneys (If Known) Suffolk, County Gerard Glass, Esq.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ PTF ☐ DEF ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 3 ☐ 3
Citizen or Subject of Foreign Country ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395B) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input checked="" type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Habeas Corpus <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (Specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1983, 1985 and 1991a - 1st Am, 4th Am, 5th Am, and 6th Am to U.S. Const.
Brief description of cause: violation of excessive and unreasonable fines, 1st Am violations, etc.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE December 10, 2018 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # 26702 AMOUNT \$400.00

APPLYING IFP

JUDGE

MAG. JUDGE

Case 2:18-cv-07011-JFB-GRB Document 1-1 Filed 12/10/18 Page 2 of 2 PageID #: 49

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, _____, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☒
☒
☐

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is 'related' to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed 'related' to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be 'related' unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☒ Yes ☐ No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☒ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒

Yes

☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐

Yes (If yes, please explain

☒ No

I certify the accuracy of all information provided above.

Signature: _____

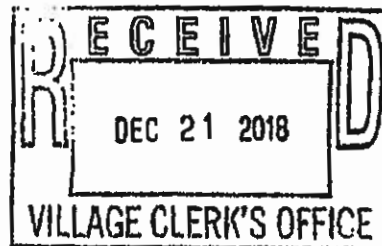
EXHIBIT “B”

Case 2:18-cv-07011-JFB-GRB Document 10 Filed 12/18/18 Page 1 of 2 PageID #: 205

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of New York



JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.

Plaintiff(s)

v.

VILLAGE OF BABYLON; and, RALPH SCORDINO,
Mayor, KEVIN MULDOWNEY, Deputy Mayor,
ROBYN SILVESTRI, Village Trustee, TONY
DAVIDA, Village Trustee, MARY ADAMS, Village Tru

Defendant(s)

Civil Action No. 2:18-cv-07011 JFB-GRB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* VILLAGE OF BABYLON; and, RALPH SCORDINO, Mayor, KEVIN MULDOWNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official capacity, and John and/or Jane Doe, unnamed, unidentified complainants, 153 West Main Street, Babylon, NY 11702

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: CORY H. MORRIS (CM 5225)
33 Walt Whitman Rd, suite 310
Dix Hills, New York 11746
Phone: (631) 450-2515

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 12/18/2018



s/ Jean Bollbach

Signature of Clerk or Deputy Clerk

Case 2:18-cv-07011-JFB-GRB Document 10 Filed 12/18/18 Page 2 of 2 PageID #: 206

AO 140 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:18-cv-07011 JFB-GRB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Rule 4 (l))

This summons for (name of individual and title, if any) _____
was received by me on (date) _____.

☐ I personally served the summons on the individual at (place) _____
on (date) _____; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
_____, a person of suitable age and discretion who resides there,
on (date) _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on (name of individual) _____, who is
designated by law to accept service of process on behalf of (name of organization) _____
on (date) _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

2:18-cv-07011 JFB-GRB

United States District Court
Eastern District of New York

JOHN LEPPER AND NOELLE LEPPER, individually and as
parents and natural guardians of their infant children,
B.J.L. and B.I.,

Plaintiffs

-against-

VILLAGE OF BABYLON; and, **RALPH SCORDINO**, Mayor, **KEVIN
MULDOWNEY**, Deputy Mayor, **ROBYN SILVESTRI**, Village
Trustee, **TONY DAVIDA**, Village Trustee, **MARY ADAMS**, Village
Trustee; **STEPHEN FELLMAN**, Village of Babylon Building
Inspector; **SUZANNE SCHETTINO**, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon Attorney; **DEBORAH
LONGO**, Planning Board, Village of Babylon, each individually
and in their official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

Defendants

AMENDED VERIFIED COMPLAINT

CORY H. MORRIS
LAW OFFICES OF CORY H. MORRIS
Attorney for Plaintiffs
VICTOR JOHN YANNAcone, JR., *of counsel*

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PLAINTIFFS DEMAND A TRIAL BY JURY

PRELIMINARY STATEMENT

This is a civil action seeking a declaratory judgment and equitable relief against, and compensatory, general, and punitive damages, costs, disbursements, and attorneys' fees from, the Defendants for violating Plaintiffs' civil, constitutional, and human rights, under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution and New York State Law; and to recover compensatory, general, and punitive damages, costs, disbursements, and attorneys' fees from the Defendants for their negligence, abuse of process, negligent and/or intentional infliction of emotional distress, and prima facie tort.

INTRODUCTION

1. Plaintiffs, John Lepper and Noelle Lepper, individually and as the parents and guardians of their infant son, B.J.L., and daughter, B.L., collectively referred to herein as the "Lepper family," allege that Defendants, jointly and severally, individually and collectively, intentionally, knowingly, wantonly, negligently, and/or recklessly, sought to and did wrongfully deprive the Lepper family of their civil, constitutional, and human rights by committing acts under color of law which depriving the Lepper family of their civil, constitutional, and human rights.
2. Plaintiffs, John Lepper and Noelle Lepper, individually and as the parents and guardians of their infant son, B.J.L., and daughter, B.L., collectively referred to herein as the "Lepper family," allege that Defendant Village of Babylon was negligent in training, hiring and supervising its Building Inspector, Defendant Stephen Fellman and was deliberately indifferent to the need to train its Building Inspectors.
3. Plaintiffs, John Lepper and Noelle Lepper, individually and as the parents and guardians of their infant son, B.J.L., and

daughter, B.L., collectively referred to herein as the “Lepper family,” allege that Defendant Village of Babylon is liable to the Plaintiffs for abuse of process, malicious prosecution, and for conspiring to condone and encourage such civil rights violations and for conspiring to violate Plaintiffs’ Civil Rights.

I. JURISDICTION AND VENUE

4. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331 and 1343.
5. This honorable Court is requested to exercise supplemental jurisdiction with respect to Plaintiffs’ State Law claims pursuant to 28 U.S.C. §1367.
6. This action is brought pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985, 42 U.S.C. § 1986, and 42 U.S.C. § 2000d.
7. This action is also brought pursuant to the Declaratory Judgment Act, under 28 U.S.C. §§ 2201–2202, to address the specific and anticipated harm Plaintiffs and all other similarly situated residents within the Village of Babylon face.
8. Declaratory relief is necessary whether or not Defendant Village of Babylon discontinues prosecution so long as the threat of prosecution for violation of Village of Babylon Code Section 365–26 continues to exist.
9. Venue in the Eastern District of New York is proper under 28 U.S.C. § 1391, based on the fact that the place where the events and violations herein alleged occurred was in Suffolk County, New York.

II. ADMINISTRATIVE PROCEEDINGS AND TIMELINESS

10. This action has been commenced within the three-year statute of limitations applicable to federal civil rights actions brought pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985 and 42 U.S.C. § 1986.

11. There are no effective New York state or federal administrative remedies available to the Lepper family.
12. Plaintiffs have exhausted any potentially effective administrative remedies.
13. On or about December 7, 2018, Plaintiffs filed a Notice of Claim against the Village of Babylon.
14. Plaintiffs avail themselves of the General Municipal Law Section 50-H for the purpose of an examination.

III. PARTIES

15. Plaintiff, JOHN LEPPER is a citizen of the United States, an honorably discharged United States Marine presently employed as a member of the Fire Department of the City of New York and resides at 59 Cockenoe Avenue, in the Incorporated Village of Babylon, Suffolk County, New York.
16. Plaintiff, NOELLE LEPPER is a citizen of the United States, and resides at 59 Cockenoe Avenue, in the Incorporated Village of Babylon, Suffolk County, New York.
17. John Lepper and Noelle Lepper his wife are the lawful owners of 59 Cockenoe Avenue, a corner lot of 7,575 square feet (0.1739 acres) with 50.50 feet frontage along Cockenoe Avenue, a 50 foot public roadway, and 150 feet frontage along Wampum Road, a 33 foot public roadway. in the Incorporated Village of Babylon, in the Town of Babylon, Suffolk County, New York and identified on the Suffolk County Tax Map as parcel 0102-004.00-01.00-100.00. The property appears in its present configuration as Lots 19B & 19C in Block F as shown on Map of Sampwam Park-Annex filed on October 31, 1921 as Map No: 758 in the Incorporated Village of Babylon, Town of Babylon, Suffolk County, New York (hereinafter referred to as the "Subject Property").
18. Infant B.J.L. is a six-year-old minor born of the union of John Lepper and Noelle Lepper.

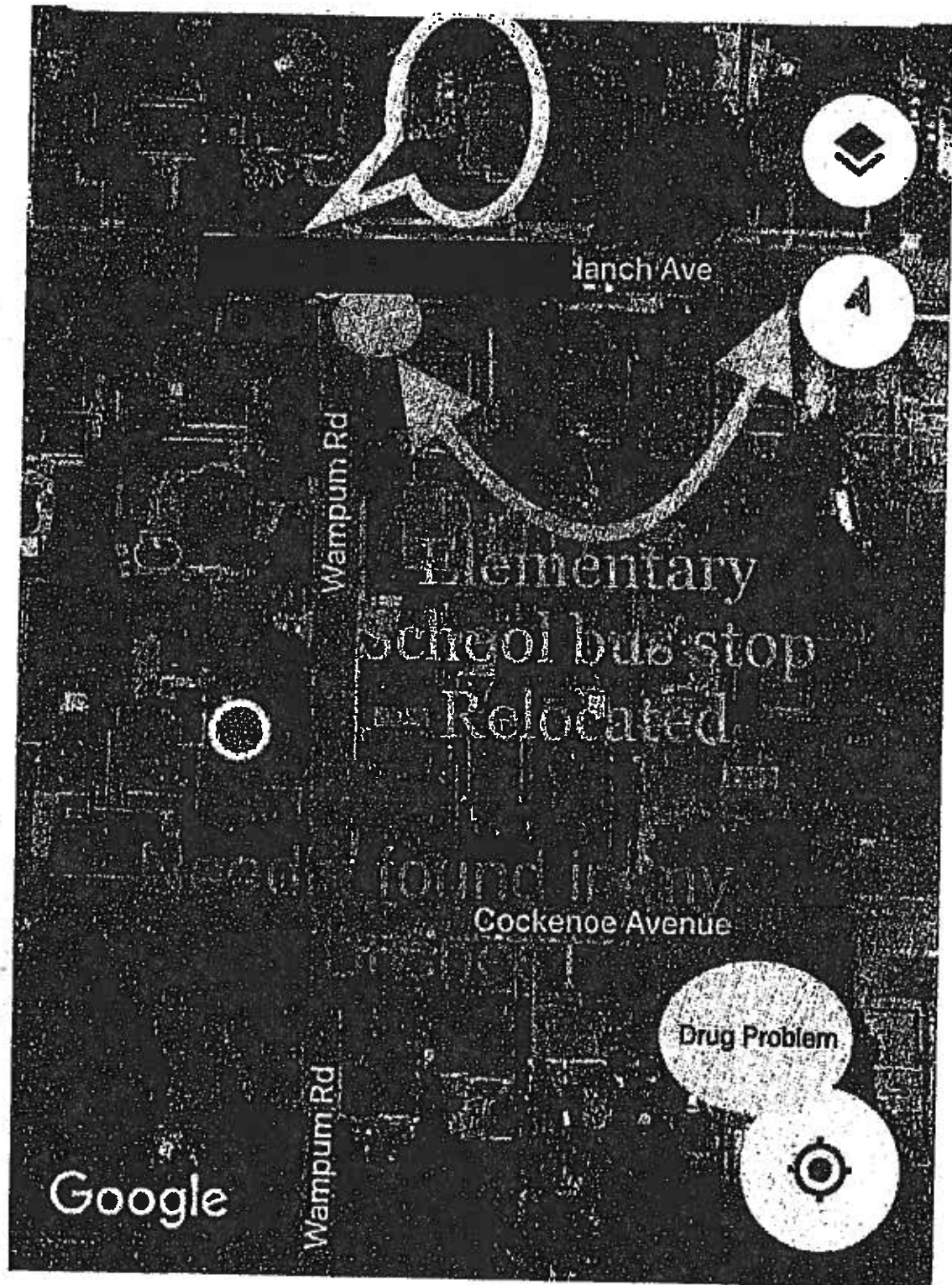
19. Infant B.L. is a five-year-old minor born of the union of John Lepper and Noelle Lepper.
20. Collectively, John Lepper and Noelle Lepper his wife, Infant B.L. and Infant B.J.L. are referred to herein as "Plaintiff" or "Plaintiffs."
21. At all times relevant in this Complaint, and upon information and belief, DEFENDANT VILLAGE OF BABYLON is a recipient of federal funds and was a recipient of federal funding at the time of the events complained of herein.
22. Defendant Village of Babylon is an incorporated Village located within the Town of Babylon in Suffolk County, New York.
23. Defendant Village of Babylon is governed by an elected Mayor and four elected Trustees, collectively the Babylon Village Board.
24. According to information posted on the Village of Babylon website at <http://www.villageofbabylonny.gov/> Defendant Ralph Scordino, is the Mayor, Defendant Kevin Muldowney, is the Deputy Mayor, and Defendants Robyn Silvestri, Tony Davida, and Mary Adams, are Village Trustees.
25. Defendant Village of Babylon, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee, Mary Adams, Village Trustee; collectively the Babylon Village Board, STEPHEN FELLMAN, Defendant SUZANNE SCHETTINO, Defendant GERARD GLASS, Esq. and Defendant DEBORAH LONGO are referred to collectively as "Defendants" or "Defendant."
26. Upon information and belief, Defendant Stephen FELLMAN is the Village of Babylon Building Inspector; Defendant SUZANNE SCHETTINO, directs the Department of Public Works; Defendant GERARD GLASS, Esq. is the Village of Babylon Attorney; and Defendant DEBORAH LONGO, is

involved in administration of the Village of Babylon Planning Board.

27. All of the individual named Defendants are being sued in both their individual and official capacities.

IV. THE FACTS

28. In April 2018, when he was playing with his children, Plaintiff, John Lepper, found a syringe, a hypodermic needle which he reasonably presumed to be utilized in illegal drug use, in his front yard. He informed his neighbors immediately and was outspoken in trying to find a remedy to shield his children from potential disease and harm caused by used hypodermic needles.
29. The following is a true and accurate aerial view of the Lepper property and its surrounding neighborhood identifying the location where the hypodermic needle was found.



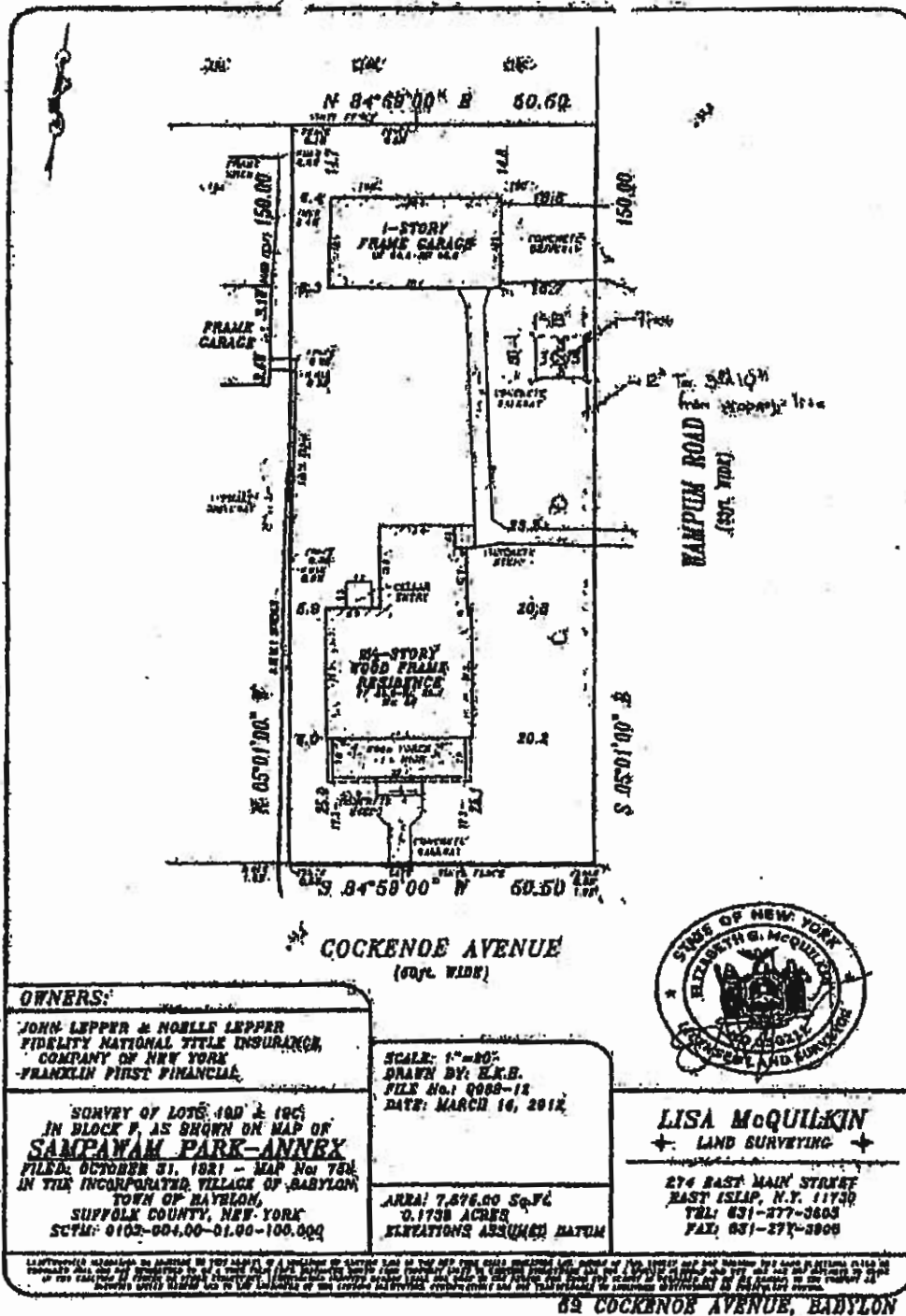
30. On or about May 3, 2018, after conferring with Plaintiff Noelle Lepper, Plaintiff John Lepper began to utilize timbers from an old boat house that was destroyed in Superstorm Sandy to create a treehouse to insulate his children from potential contact with the hypodermic needles he found in and around his property at 59 Cockenoe Avenue within the Village of Babylon.
31. The following Lepper family neighbors can see the treehouse from their property: Joe and Joanne Mineo and their sons M.M. and N.M.; Pay and Keirsten Murphy and their daughter G.; Kevin and Lyndsey Cunningham and their children A. and S.; Joe and Katelyn and their two pre-school-age children all of whom live on Cockonoe Ave; and Mike And Josephine Domingo and their three college-age daughters, Anna, Giovanna and Lucia who live on Wampum Road, Village of Babylon, Suffolk County New York.
32. By letter dated May 10, 2018, Village of Babylon Building Inspector Stephen Fellman informed Mr. Lepper that "It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit."
33. Village of Babylon Code Section 365-26, section A, states: "No building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector. The Building Inspector shall require that the application for a permit and the accompanying plot plan, plans and specifications shall contain all information necessary to enable him to determine whether the proposed building addition or structural alterations or change of use to an existing building

comply with the provisions of this chapter and Chapter 171, Flood Damage Prevention, where applicable.”

34. Village of Babylon Code Section 365-26, section C, subsection (3) states “A building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet.”
35. In response to the May 10, 2018 letter from Defendant Fellman, Plaintiffs stopped work on the treehouse for their children.
36. Upon information and belief, Defendant elected officials, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee and Mary Adams, Village Trustee are jointly and severally, individually and collectively, responsible for allowing such notice to be sent to Plaintiffs.
37. According to statements made by Defendant Gerald Glass in open Court on December 10, 2018, Defendant elected officials Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee, Mary Adams, Village Trustee, sought to enjoin Plaintiffs use of their property in exchange for monies to which Defendants, jointly and severally, individually and collectively, by and on behalf of the Village of Babylon sought to take from the Plaintiffs as homeowners by improper attempts to enforce Village of Babylon Code Section 365–26.
38. On or about May 21st, 2018, Plaintiff John Lepper visited the Building Department office of Defendant Village of Babylon; completed a building permit application and submitted a front elevation/framing drawing with a copy of a recent survey of the Lepper Family Homestead.
39. The following is a true and correct copy of the survey of the Lepper property indicating the location of the children’s treehouse.

01/28/2013 08:39 FAX

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40. Upon information and belief, Defendants jointly and severally, individually and collectively, failed to act upon or even acknowledge Plaintiffs' efforts to comply with the Village of Babylon Code.
41. Defendants, jointly and severally, individually and collectively, knew and/or had reason to know that the Plaintiff Lepper parents sought to use their real-property in a manner that would contribute to and benefit the education and personal growth of their infant children.
42. Defendants, jointly and severally, individually and collectively, never intended to act upon Plaintiffs' building permit application.
43. The unidentified Building Department employee, "Jane Doe", to whom Plaintiff John Lepper submitted the application commented that she usually did not receive such a detailed drawing from homeowners.
44. On or about May 21, 2018, while at the Village of Babylon Building Department office, John Lepper spoke with another employee of Defendant Village of Babylon, Holly Zappala, and told her that he had found a used hypodermic needle on his property, and other used hypodermic needles were being found in the immediate neighborhood of his property and that he had concerns for the well-being of his family.
45. Ms. Zappala told Plaintiff John Lepper that Defendant Village of Babylon was aware of drug-related crimes and the presence of hypodermic instruments prior to April 2018 and that she and the Village of Babylon administration may be aware of criminal activity occurring on the subject premises and toward the Lepper Family.
46. Plaintiff John Lepper, confident he was protecting his family and speaking out toward remedying the crime occurring on his property and the scourge of drugs in his community, spoke to and informed everyone present in the building department on

May 21, 2018 that it was his intention to build the treehouse for his son's birthday on July 7th, 2018 to allow his son the liberty and free use of the subject premises while maintaining a safe distance from the criminal activity in the neighborhood and the larger criminal narcotic problem known to the Village of Babylon.

47. Defendants, jointly and severally, individually and collectively, apparently intended to take advantage of the voluntary, but not legally required, application filed by John Lepper for a permit to construct a tree house for his children as a vehicle to charge Plaintiffs with violations of Village of Babylon Code Section 365-26 and collect fines from Plaintiffs by simply refusing to consider and act upon the application by Plaintiff, John Lepper.
48. On June 15, 2018, Plaintiff John Lepper called the Village of Babylon Building Department to check on the status of his application and was told by an unidentified employee, Jane Doe, that no determination had been made. At this point no one representing the Village of Babylon had mentioned anything about constructing the proposed treehouse being a violation of Village of Babylon Code Section 365-26.
49. Plaintiff John Lepper immediately ceased construction and assembly of the partially fabricated treehouse as soon as he was ordered to do so by Building Inspector Fellman.
50. Determined to either delay construction of an innocuous and code-compliant treehouse solely for the benefit of minor children, or harass and intimidate the Lepper family by destroying their infant son's eagerly anticipated birthday present, the Defendants, jointly and severally, individually and collectively, refused to issue the appropriate building permit.
51. Therefore, within hours of their son's birthday, Plaintiffs John and Noelle Lepper completed the treehouse to safe-guard their children from what Defendants, jointly and severally,

individually and collectively, knew or should have known was the scourge of drug abuse and the criminal activity known to be occurring in the Lepper neighborhood and already visited upon the Lepper property.

52. On July 19, 2018, Plaintiffs, received by certified mail three accusatory instruments dated July 11th, 12th & 13th each of which stated Mr. Lepper was in violation of Village of Babylon Code § 365-26 for construction of a treehouse without a permit.
53. In response, on July 19, 2018, Plaintiff John Lepper immediately visited the Village of Babylon Building Department to inquire about the three summons he had received. He was told that he needed to make an appointment with Building Inspector Fellman and a meeting was scheduled for July 24, 2018.
54. Plaintiff John Lepper met with Defendant Building Inspector Fellman on July 24, 2018 and asked Defendant Building Inspector Fellman about each essentially identical citation which merely concluded that a "treehouse" violated Village of Babylon Code § 365-26. In response, Defendant Building Inspector Fellman stated that Mr. Lepper owed \$250 for the first accusatory instrument, \$500 for the second accusatory instrument and \$1,000 for the third accusatory instrument.
55. Defendants, jointly and severally, individually and collectively, engaged in this course of conduct to raise revenue and receive monies to which Defendant Village of Babylon would not otherwise be entitled.
56. Plaintiff John Lepper protested to Defendant Building Inspector Fellman that not only were such fines unwarranted and excessive but that no prior notice of any violation had been provided to the Lepper family. In response, Defendant Building Inspector Fellman told Mr. Lepper to resolve the matter in Court on August 14, 2018.

57. Upon information and belief, Defendant Village of Babylon is more concerned with punishing taxpaying residents and extorting unconscionable fines from them for questionable violations of obscure and arcane, vague and ambiguous ordinances extracting fees and fines out of law abiding resident property owners, than providing municipal services such as promptly processing an application for a building permit.
58. Among the parents and children who visited the Treehouse prior to August 14 hearing were: Joe and Joanne Mineo and their sons, M.M. age 14 and N.M. age 16; Pat and Kirsten Murphy and their daughter G.M., age 7; Terri McSweeney and Cindy McSweeney with E.M., age 7 and P.M., age 5; Steve Kazda and Amanda Kazda and their sons, J.K., age 6 and J.K. age 4; Mike Columbia and Christina Columbia and their daughters, C.C., age 6 and C.C., age 4; Mike Pagamo and Doreen Pagamo and M.P., age 8 and M.P., age 6; Charlie Lepper and Deena Lepper and their children, J.L., age 14; J.L., age 10, and C.L., age 8; George Samuel Kravis age 93, a WWII veteran and Barbra Kravis who is over 65 years of age who lived on the block for over sixty years.
59. Plaintiff John Lepper who is a New York City firefighter sought an adjournment of the hearing from the afternoon session of the Court to the evening session in order for him to attend a memorial service for a brother firefighter who had died of illnesses from service at the 9/11 scene. Village Judge John T. Rafter denied the request and Firefighter Lepper was forced to leave the Memorial service before it was completed, arriving in Court at precisely 1400 hours still in his Class A uniform.
60. Village Judge John T. Rafter and Defendant Gerard Glass, the Babylon Village attorney acting as the prosecutor both knew that Mr. Lepper was unrepresented by counsel, and that he was facing fines which might amount to \$1,750 together with

- court costs and the possibility of continued and continuing prosecution, yet at no time did Village Judge Rafter or Village Attorney Glass ever warn the Defendant or advise him not only of his right to counsel, but because of the questionable nature of the charges and the circumstances of the prosecution the real need to consult an attorney before proceeding any further in his own defense.
61. Upon information and belief, the wife of Village Judge John T. Rafter works with the unidentified and unnamed complainant who instigated the prosecution of the Lepper Family for erecting a treehouse for their children and the children of the neighborhood.
 62. Upon information and belief, Defendant elected officials, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee and Mary Adams, Village Trustee conveyed to Village Justice John Rafter and other employees of Defendant Village of Babylon such as Building Inspector Fellman their desire to collect money from fines following convictions of Village of Babylon residents who had the temerity to challenge the unsupported judgment of Defendant Building Inspector Fellman that a violation of Village of Babylon Code Section 365-26 existed.
 63. On or about August 14, 2018, Stephen Fellman, as Babylon Village Building Inspector wrote to Mr. Lepper declaring that "Per Section 116 Unsafe Structures of the International Building Code the tree house at the above referenced premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy is issued."
 64. There is no evidence that the Village of Babylon ever adopted the International Building Code nor incorporated its Section 116 as part of the Village of Babylon Code.
 65. No substantial credible evidence has ever been presented showing that the Lepper family treehouse is in any way

unsafe for its intended use by the Lepper children and other children.

66. Defendant Village Attorney Glass requested an adjournment of the hearing scheduled for September 4, 2018 and Village Judge Rafter issued a verbal "stop work" order and asked us to unplug the light. Then he adjourned the case to September 18, 2018.
67. Upon information and belief, on September 18, 2018, Village Judge Rafter learned that the office of Defendant Village of Babylon Mayor had received a complaint regarding John Lepper.
68. Village Judge Rafter never informed Mr. Lepper, who was appearing pro se without benefit of counsel, of his rights to receive information about the complaint and the complainant and his right to challenge the accusatory instruments that merely stated, "Tree House" and were unsigned as legally insufficient.
69. Nevertheless, Village Judge Rafter did inquire of Mr. Lepper, pro se, about his efforts at complying with the Village of Babylon Code § 365-26 and the permit application which Mr. Lepper voluntarily filed.
70. Mr. Lepper informed Village Judge Rafter that his building permit application was accepted by the employees of the Village of Babylon Building Department.
71. The following interaction took place between Mr. Lepper and Village Judge Rafter:

JUDGE RAFTER: Okay. Did you have an understanding of what the purpose of the permit is?

MR. LEPPER: Yes sir.

JUDGE RAFTER: What was your understanding of what the purpose of the permit was?

MR. LEPPER: A construction permit was required for a structure being put up according to building code 365-26 it's not

required for under 90 square feet. And I explained that to Mr. Fellman.

JUDGE RAFTER: I will interpret the code, sir.

MR. LEPPER: Okay.

JUDGE RAFTER: Neither you nor Mr. Fellman will interpret the code.

Trial transcript September 18, 2018, 10:3–23.

72. Already, Village Judge Rafter was imputing fault on the pro se Defendant, John Lepper who had attempted to comply with what was a patently vague and ambiguous ordinance:

JUDGE RAFTER: Did you have an understanding of that before you undertook the construction?

MR. LEPPER: Not exactly, sir. Because I did not think that a permit was required for what I was putting up.

Trial transcript September 18, 2018, 11:12–19.

Village Judge Rafter continued to make the case for the prosecutor, Defendant Village Attorney Glass, who at no time objected to the line of inquiry of the accused, Mr. Lepper:

JUDGE RAFTER: Did you contact the building department before you began construction or even contemplated construction of a tree house?

MR. LEPPER: Yes. On the 19th when I submitted the application. Prior to the platform no, sir. I did not think a permit was required for a tree house. I was not sure.

Trial transcript September 18, 2018, 12:2–14.

73. Rather than credit the sworn testimony of John Lepper. A pro se Defendant, and presumed innocent until proven guilty beyond reasonable doubt, Village Judge Rafter continued to push the burden onto Mr. Lepper who provided sworn evidence that he submitted a permit application prior to construction and prior to the issuance of any accusatory instrument by Village of Babylon:

JUDGE RAFTER: What is the basis of your [Mr. Lepper's] objection?

MR. LEPPER: That was submitted on May 19th after I received the letter from Mr. Fellman regarding construction of the tree house without a permit. That was accepted by the office upstairs on May 19th and it was complete.

JUDGE RAFTER : You note there is no date on this. Do you have any proof as to when it was received?

MR. LEPPER : I was given a copy of the drawing I made and the survey that it was received.

Trial transcript September 18, 2018, 35:7-23.

74. Determined to convict the pro se Defendant John Lepper, Village Judge Rafter interrupts Defendant Village Attorney Glass when questioning Defendant Building Inspector Fellman during the trial about Mr. Lepper's contention that the Lepper Family Treehouse did not require a permit:

MR. GLASS: Mr. Fellman, it's your contention that under the Babylon Village code 365-26 there was no building permit for this structure -- this tree house, correct?

MR. FELLMAN: Correct.

MR. GLASS: Is there any provision of the Babylon Village code that would exempt one in the Village of Babylon from having to obtain a building permit based up on the facts you have testified to?

JUDGE RAFTER: Mr. Glass, I think that calls for a conclusion of law. So I am not going to permit him to answer that.

MR. GLASS: Okay. I have nothing further.

JUDGE RAFTER: You can ask in his opinion as a violation of the code and then set forth the facts upon which he bases his opinion. And then I would make the ultimate determination.

MR. GLASS: Judge, perhaps this should be the question then. Is there any provision of the code that exempts tree houses from obtaining a building permit?

MR. FELLMAN: No.

MR. GLASS: Okay. I have nothing further judge.

Trial transcript September 18, 2018, 39:11-25, 40:2-22.

75. Most telling is the testimony from Defendant Building Inspector Fellman that “we can issue violations every 24 hours.”

Trial transcript September 18, 2018, 45:11–12.

76. Village Judge Rafter convicted John Lepper by Order dated October 17, 2018 yet, as was stated on the record on November 20, 2018, did not recuse himself or allow further inquiry into his wife’s relationship with the complainant who, upon information and belief, submitted a complaint against the Lepper Family Treehouse.
77. In his decision Village Judge Rafter stated that the “testimony of Stephan Fellman...established that he visited the premises in question on May 9, 2018, following receipt of a complaint in the Mayor’s office that a treehouse was being constructed,” yet no such complaint was ever shown to Mr. Lepper although he requested a copy on several occasions, nor was it produced during the trial.
78. On or about October 17, 2018, after a trial singularly deficient in the procedural due process which should have been afforded a pro se defendant in a quasi-criminal proceeding, Mr. Lepper was found in violation of Section 365–26 of the Village of Babylon Code based upon a reference by Hon. John T. Rafter to the Merriam-Webster definition of a building without any citation to the edition and year of publication of that dictionary or explanation of whether it had ever been adopted as an element of the Village of Babylon Code.
79. The Order by Village Judge Rafter finding John. Lepper in violation of Section 365–26 of the Village of Babylon Code required Village Judge Rafter to use a definition of building from a dictionary since it was not defined in the Village of Babylon Code: “The Merriam-Webster Dictionary defines a building as follows; A structure that is designed or intended for support, enclosure, shelter or protection of persons,

animals or property having a permanent roof that is support by columns or walls.”

Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 1.

80. Without referring to the remaining provisions of the Village of Babylon Code governing children’s play gyms and the expansive use of “any combination,” Judge Rafter states “The Court hereby specifically finds that the treehouse in question constituted a “building” within the meaning of the subject Code section.”

Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 3.

81. In that same October 17, 2018 Order finding Mr. Lepper in violation of Section 365–26 of the Village of Babylon Code, Village Judge Rafter states, “it is noted that the Notice of Violation is not signed by any representative of the Village of Babylon.”

Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2.

82. In that same October 17, 2018 Order finding Mr. Lepper in violation of Section 365–26 of the Village of Babylon Code Village Judge Rafter states, “it is noted that the Notice of Violation is not signed by any representative of the Village of Babylon.”

Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2.

83. In his October 17, 2018 Order finding Mr. Lepper in violation of Section 365–26 of the Village of Babylon Code Village Judge Rafter finds that “Defendant [Mr. Lepper] did apply for a permit” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2.) but then states without any reference to the record, “but his application was deemed incomplete as it did not contain a drawing from a licensed

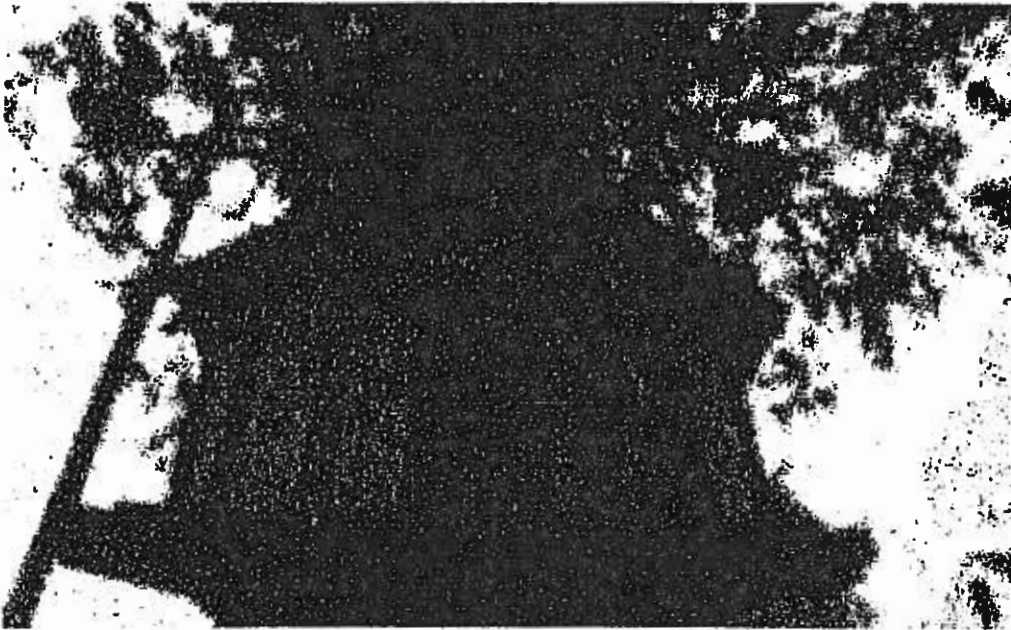
architect or engineer.” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2.)

84. There is no evidence that the Lepper family was ever informed by any representative of the Village of Babylon that such a “drawing” was required for a children’s tree house of less than 90 square feet floor area.
85. If, in fact, the Village of Babylon Code Section 365–26 does require such an expensive document to obtain a permit for a children’s tree house of less than 90 square feet of floor area it essentially prevents a homeowner from the legal and proper use of their real property and is on its face a violation of Plaintiffs’ civil, constitutional and human rights associated with title to real property and the quiet enjoyment of that property as a family.
86. On October 17, 2018, after the Order of Village Judge Rafter was delivered by code enforcement, John Lepper went to Village Court to inquire about appeal.
87. The next day, October 18, 2018, Babylon Village Attorney Gerard Glass sent a letter to the Lepper Family, stating, in toto, that “As you know this office is counsel to the Village of Babylon. The Court has rendered its decision. Please let me know your intentions. Thank you for your attention and courtesies herein.”
88. The day after Attorney Glass sent his letter, and two days after the Order was issued, Building Inspector Fellman stated in a letter that, “On October 17, 2018 Village Justice John Rafter found you guilty of each offense listed on various summonses you received regarding the construction of a treehouse within your front yard setback. I, as Building Inspector, am ordering the continuation of the stop work order barring any further construction or occupancy of the tree house.”

89. Building Inspector Fellman concluded his October 19, 2018 letter with the threat that the Lepper Family “must remove the tree house in its entirety or summonses may be issued on a daily basis.”
90. Rather than allow the Lepper family sufficient time to appeal or seek counsel to elapse, the Defendants, jointly and severally, individually and collectively, did work together to injure the Plaintiff Lepper family; silence the Lepper family from speaking out about community problems, and did engage in an abuse of legal process to have Mr. Lepper remove the Lepper Family Treehouse.
91. Defendant Building Inspector Fellman did issue multiple additional accusatory instruments concerning the Lepper Family Treehouse to the Leper family on Halloween, October 31, 2018.
92. On November 5, 2018, John Lepper paid the fines imposed on him by Village Judge Rafter in his October 17, 2018 Order.
93. On November 13, 2018, Building Inspector Fellman the day of a hearing scheduled for trial on accusatory instruments previously issued by Building Inspector Fellman, Building Inspector Fellman created and filed a document designated “Accusatory Instrument/Information for State and Village Ordinances” asserting John Lepper “did wrongfully and unlawfully commit the offense of Section 365–26 Construction without a Permit,” followed by a recital of “§365–26 Permit Required; Materials to be submitted.”
94. Nowhere in that putative Accusatory Instrument/Information and the ordinance quoted therein is there any mention of drawing by an “architect or engineer.”
95. In that putative Accusatory Instrument/Information, Building Inspector Fellman alleges that he “did observe the defendant [John Lepper] erected a treehouse without a building permit. Further after a stop work order was issued on 10/19/18

- barring any further construction or occupancy of the treehouse the defendant added lights.”
96. On November 13, 2018, Village Justice John Rafter conducted a hearing on the accusatory instrument issued on October 20, 2018.
 97. November 16, 2018, Plaintiff John Lepper filed Notice of Appeal from the Order of Village Justice John Rafter dated October 17, 2018.
 98. Plaintiff John Lepper filed a FOIL request and a litigation hold notice and to this date the Defendants have not responded or complied.
 99. On November 20, 2018, Village Justice John Rafter conducted a hearing on the October 20, 2018 and October 31, 2018 accusatory instruments.
 100. On November 20, 2018, through counsel, Mr. Lepper asked the Court to enjoin the daily issuance of fines so that Mr. Lepper may resolve the new set of accusatory instruments against him on the merits but Village Justice John Rafter refused to do so.
 101. On November 21, 2018, John Lepper tried to obtain copies of exhibits that were missing from the trial on September 18, 2018. After waiting two hours he was denied copies.
 102. November 27, 2018, at approximately 1515 hours Plaintiff John Lepper filed a Motion to dismiss the outstanding accusatory instruments together with a letter from Attorney Morris requesting copies of the exhibits from the trial on September 18, 2018.
 103. On December 10, 2018, Plaintiffs filed their Verified Complaint accompanied by an Order to Show Cause and the matter was scheduled to be heard before Hon. Joseph F. Bianco.

104. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon utilized daily fines against purported Village of Babylon Code violators to obtain compliance.
105. Defendant Gerald Glass, Esq. did represent in open Court on December 10, 2018 that the Village of Babylon intends on requiring building permits for any treehouse structure in the Village of Babylon.
106. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon sought to enjoin the use of a light that illuminated Plaintiffs American Flag and the adjoining street where illegal drug activity had taken place.



107. Defendant Gerald Glass, speaking on behalf of all Defendants, did wish to enjoin Plaintiff from efforts at ameliorating the drug use that occurred on and around his property by illuminating the street.
108. Defendant Gerald Glass, on December 10, 2018 before this Honorable Court, did provide several admissions as to the true

intentions of Defendants, jointly and severally, individually and collectively, to punish Plaintiffs for every day that the Lepper Family Treehouse existed.

109. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon was monitoring Plaintiffs' property.
110. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon was conducting surveillance of Plaintiffs' property and the family activities thereon.
111. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon took issue with a temporary electric extension cord to a tree on Plaintiffs' private property.

V. ACTIONS OF DEFENDANTS COMPLAINED OF BY PLAINTIFFS

112. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments against Mr. Lepper in retaliation for his speaking out about matters of public concern in and around the Village of Babylon.
113. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments against Mr. Lepper to further the wishes of some unidentified complainant and in derogation of the constitutional rights of the Lepper Family.
114. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments to Mr. Lepper carrying criminal sanctions to the Lepper Family without allowing Mr. Lepper the opportunity to comply with or otherwise challenge the actions of the Village of Babylon,

115. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments to obtain monies and property for which Defendants were not entitled.
116. Defendants, jointly and severally, individually and collectively, knew and had reason to know that their actions were unjustified and without probable cause or even arguable probable cause.
117. Defendants, jointly and severally, individually and collectively, knew and had reason to know that their actions would cause harm to and inflict distress upon the Plaintiffs.
118. The Defendants, jointly and severally, individually and collectively, and the inability to obtain a fair trial continue to oppress the Lepper family and cast a cloud of criminality over their persons, home, and family.
119. Among the examples of the organized oppression of the Lepper family by the Defendants, jointly and severally, individually and collectively, has been the wrongful delay and outright refusal to provide Mr. Lepper with the exhibits from his trial before Village Judge Rafter.

VI. THE BASIS FOR EQUITABLE RELIEF

120. Defendant Village of Babylon through the threats of Building Inspector Fellman continues to insist that the Lepper family tear down and completely remove their children's treehouse under threat of daily fines of up to \$1,000 each day.
121. The Lepper family is in imminent danger of serious, permanent, and irreparable economic damage.
122. The Lepper family parents continue to live in fear that they will suffer serious economic punishment for a reasonable use of their own private property and their temerity in exercising their First Amendment rights by speaking out against the unconscionable actions of the Defendants in depriving the

Lepper family of their liberty interest in raising their children as they see necessary which included trying to protect their infant children from exposure to hypodermic needles on the ground by building them a safe harbor in the air; and then retaliating against the Lepper family for speaking out.

123. The Lepper family Plaintiffs have no adequate remedy at law.
124. Defendant Village of Babylon has not established any association between Village of Babylon Code Section 365-26 and the public health, safety and welfare of the residents of the Village of Babylon.
125. That there is no substantial credible evidence that the Lepper family children's treehouse represents a threat, much less a danger, to the health, safety, and welfare of the residents of the Village of Babylon.
126. Staying enforcement of the ordinance pending the resolution of this action and a declaration of the constitutionality and enforceability of Village of Babylon Code Section 365-26 will not cause any harm and/or damage to the residents of the Incorporated Village of Babylon.
127. Mr. Lepper and the Lepper family have made no other request for injunctive relief.

VII. FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF

128. Mr. Lepper seeks to enjoin the enforcement of Village of Babylon Code Section 365-26 as unconstitutional.
129. The elected officials, particularly the Village Judge, and all the employees, agents of, and consultants to the Incorporated Village of Babylon have a clear and unequivocal duty to all the resident property owners of the Village to assure them peaceful and quiet enjoyment of their homes and property according to the ancient and long standing maxim of at the heart of common law equity jurisprudence, *sic utere tuo ut*

alienum non laedas, enjoining everyone to use their own property in such a way as not to injure that of another.

130. Defendant Village of Babylon seeks to limit the use of the Subject Premises.
131. Defendant Village of Babylon claims it has a right to restrict the erection of structures on private property that are less than 90 square feet.
132. Village of Babylon Code §326–26 can only be enforceable if it is a proper exercise of the police powers of the State by the Village of Babylon.
133. Village of Babylon Code §326–26 should be considered a zoning regulation by Defendants Village of Babylon.
134. To impose fines and even imprisonment for erecting a “building... on any lot, plot or premises” in the Village of Babylon “until a permit authorizing the same shall have been issued by the Building Inspector” (Village of Babylon Code §326–26.) without defining “building” and the phrase, “lot, plot or premises” creates a vague, ambiguous, and essentially meaningless ordinance.
135. Each of the accusatory instruments lodged against Defendant Lepper is based on the claim that erecting a treehouse of less than 90 square feet without a building permit or variance from the Zoning Board of Appeals is a violation of the Village of Babylon Code.

VIII. DEFENDANTS USE OF LEGAL PROCESS, FINES AND PROSECUTION IS DESIGNED TO SILENCE MR. LEPPER AND VIOLATES THE FIRST AMENDMENT RIGHTS OF THE LEPPER FAMILY

136. Defendants have constrained the ability of the Lepper family to create a treehouse for his infant children shortly after he spoke out against the criminal activity occurring within Village of Babylon.

137. Defendants knew and had reason to know that the Lepper family parents intended on building a treehouse to remove their children from and allow their children to play without the danger of contact with hypodermic needles on the ground which had been discarded from the street and public walkways onto the Lepper property.
138. Defendants knew and had reason to know that John Lepper spoke publicly and spoke out against the hypodermic needles found on his property, crime in his community and the safety and wellbeing of his children.
139. In response to his identifying the problem of the hypodermic needles and their indication of a community drug problem and bringing the issues before the administration of the Village of Babylon, Defendants, individually and collectively, did conspire and act to deprive Mr. Lepper of his rights under the First, Fourth, Fifth, and Fourteen Amendment by ordering immediate and total removal of the treehouse he built for his children under the threat of continuing Draconian confiscatory fines and penalties.
140. Defendants, individually and collectively, did act to deprive Mr. Lepper of his rights under the First, Fourth, Fifth, and Fourteen Amendment while knowing and having reason to know that Mr. Lepper fully complied with the permit process of the Village of Babylon Code, and by obfuscating an already arcane and obscure administrative process cause injury to the Lepper family.
141. Rather than remedy the problem of drug abuse in the community or address the concerns Mr. Lepper expressed about the dangers of the discarded hypodermic needles which could have been addressed by Village of Babylon Code Enforcement, Defendants accepted the building permit which Mr. Lepper filed and the fee which he tendered without any intention of processing the application or even acknowledging

its existence in their later prosecution in the Babylon Village Court.

142. Upon information and belief, Defendants at the behest of an unnamed and unidentified complainant did conspire and plan to issue accusatory instruments to Mr. Lepper with the ultimate goal of obtaining money, removing all remnants of a then unfinished treehouse, and punishing the Lepper family for exercising their constitutional rights.
143. On May 10, 2018, Defendants acknowledged that the treehouse did not violate any provision of the Village of Babylon Code by accepting the building permit application and fee.
144. Defendants concede that notice of all three violations which were each dated in May, 2018, were actually sent to Mr. Lepper in July, 2018.
145. Defendants delayed processing the Lepper family building permit for their children's treehouse and by failing to acknowledge and/or act upon the application, created a situation where fines would accrue against the Lepper family for lack of a permit and cause the Lepper family serious, permanent, and irreparable economic damage.
146. Defendants caused quasi criminal process to issue legal process against the Lepper family to silence the Plaintiff John Lepper and violate the civil and constitutional rights of the Lepper family.
147. Upon information and belief, Defendants John and/or Jane Doe did act and conspire with the Defendants, jointly and severally, individually and collectively, to silence the Plaintiff Lepper family and remove their children's playhouse.

IX. VILLAGE OF BABYLON CODE § 325-26 FORECLOSES AGE-APPROPRIATE PRIVATE RIGHTS OF ASSEMBLY AND ASSOCIATION ON ARBITRARY GROUNDS AND ARE THEREFORE TECHNICALLY CAPRICIOUS AS WELL AND CERTAINLY UNDERINCLUSIVE.

148. Plaintiffs have constitutionally protected liberty interests in their property.
149. Plaintiff John Lepper and Plaintiff Noelle Lepper have the right to establish a home and bring up children.
150. Plaintiff Noelle Lepper and Plaintiff John Lepper have the right to direct the upbringing and education of their infant children.
151. Plaintiff John Lepper and Plaintiff Noelle Lepper have the right and duty to nurture their children and direct their children's destiny.
152. Insofar as their children are concerned, Plaintiff John Lepper and Plaintiff Noelle Lepper have the right coupled with the high duty, to prepare their children for additional obligations.
153. A special respect for individual liberty in the home has long been part of our culture and our law.
154. That Defendants issued legal process to silence the Plaintiffs and to remove the Lepper Family Treehouse without probable cause that the children's treehouse would have a negative impact on the public health and safety of the residents of the Village of Babylon and thereby violated the constitutional rights and liberty interests of the Plaintiffs without due process of law.
155. Defendants took action within the span of forty-eight hours to find Mr. Lepper guilty of a crime and then threaten daily fines if the treehouse was not removed, however, they still have not acted upon the permit application filed by the Lepper family.

156. The conviction of an unrepresented pro se John Lepper and the unjustified fines imposed by Village Judge Rafter were an unconstitutional attempt to silence Plaintiff John Lepper and intimidate him from speaking out against government ineptitude, the scourge of drugs, and his intention to do something about it on his own property.
157. Defendants actions in the prosecution of the Lepper family violated their civil and constitutional rights of the Plaintiff Lepper family, their liberty rights, and their rights to due process, enjoyment of property, freedom of assembly, and the ability to associate with one another on their property without the fear of government intrusion or reprisal.
158. Defendants violated the civil and constitutional rights of the Plaintiff Lepper family by the unsupported citation of the Lepper Family Treehouse as an unsafe structure in violation of the International Building Code without the basis therefore.
159. Building Inspector Fellman never presented any substantial credible evidence identifying the nature and manner he claimed the treehouse was an unsafe treehouse.

**X. PLAINTIFFS' RIGHTS ARE BEING VIOLATED BY THE
THREAT OF CONTINUED FINES**

160. Village of Babylon Code Section 365-26 is criminal in nature.
161. The fines associated with Village of Babylon Code Section 365-26 are punitive, doubling and tripling and culminating in the demand for the removal of property without due process.
162. The actions of Defendants in enforcing Village of Babylon Code Section 365-26 against the Lepper family and threatening to continue enforcement with successive process and escalating fines and penalties for the very same conduct violate the Constitutional Rights of the Lepper family by subjecting them to repeated double jeopardy.

163. Mr. Lepper raised this issue before the Honorable John T. Rafter who ignored the issues, then convicted Mr. Lepper, an unrepresented, pro se defendant without any substantial credible evidence of guilt.
164. The accrual of multiple accusatory instruments, existing unfounded convictions of three violations and pending prosecution of further accusatory instruments establishes the imminent danger of serious, permanent, and irreparable economic damage and the likelihood that such danger will be continued based upon the sworn testimony of Defendant Building Inspector Fellman, Plaintiff John Lepper and the Lepper family has been placed in jeopardy, repeatedly, for the same alleged criminal offense.

XI. PROSECUTION OF THE LEPPER FAMILY BY THE DEFENDANTS FOR ALLEGED VIOLATIONS OF VILLAGE OF BABYLON CODE SECTION 365-26 IS AN UNCONSTITUTIONAL TAKING OF THEIR PROPERTY

165. Village of Babylon Code Section 365-26 is unconstitutional:
166. Village of Babylon Code Section 365-26 as enforced by the Defendants against the Plaintiff Lepper family is unconstitutionally vague, overbroad, and violates the civil and constitutional rights of the Lepper family guaranteed to them under the First, Fourth, Fifth, and Fourteen Amendment of the Constitution.
167. Village of Babylon Code Section 365-26 fails to give Plaintiff John Lepper fair notice that building a treehouse of less than 90 square feet is forbidden by the Code.
168. Village of Babylon Code Section 365-26 does not provide guidance to ordinary homeowners as to whether building a treehouse for their infant children might be construed as a violation subjecting them to criminal prosecution.

169. Village of Babylon Code Section 365-26 encourages arbitrary and erratic arrests and convictions.
170. The accusatory instruments charging Plaintiff John Lepper with violating Village of Babylon Code Section 365-26 for building a treehouse for his infant children upon the malice and/or animosity of a neighbor.
171. Village of Babylon Code Section 365-26 fails to meet the fundamental principle of statutory construction for laws with criminal penalties, minimal guidelines to govern law enforcement.
172. As evidenced by the Kafkaesque prosecution and continued litigation over a treehouse for the infant Lepper children on their own property, Village of Babylon Code Section 365-26 allows law enforcement and local government to pursue their personal animosity in violation of the civil and constitutional rights of the Plaintiffs.
173. Village of Babylon Code Section 365-26 has been utilized to obtain monies from Mr. Lepper under threat of continuing fines, liens on the Lepper family home, and/or jailing.

**XII. PLAINTIFFS SEEK A JUDGMENT DECLARING THAT
THEY ARE ENTITLED TO TRIAL BY JURY ON
CHARGES OF VIOLATING VILLAGE OF BABYLON
CODE SECTION 365-26**

174. Village of Babylon Code Section 365-26 is one that carries more than simple fines.
175. Because of the criminal nature of Village of Babylon Code Section 365-26, Plaintiffs aver that they are entitled to a trial right.
176. Defendants, and specifically as stated in open Court by Gerald Glass, Esq. on December 10, 2018, intend on utilizing daily fines to enforce Village of Babylon Code Section 365-26.

177. Upon information and belief, Village of Babylon Code Section 365-26 can result in fines amounting to thousand(s) of dollars a day.
178. Defendants, and specifically as stated in open Court by Gerald Glass, Esq., can utilize New York Supreme Court actions to enforce Village of Babylon Code Section 365-26 by entering the property.
179. Defendants, and specifically Defendant Stephen Fellman on October 19, 2018, threatened removal of property from Plaintiffs under threat of daily fines. .
180. Such action is beyond a petty offense as contemplated by the Constitution of the United States.
181. Such action is beyond a petty offense as contemplated by the New York State Penal Law
182. Under the New York State Constitution and the rights asserted thereunder, the Plaintiffs assert that a Jury Trial attach to prosecutions of Village of Babylon Code Section 365-26.
183. Under the Federal Constitution and the amendments thereto, Plaintiffs assert that a Jury Trial attach to prosecutions of Village of Babylon Code Section 365-26.

XIII. EIGHTH AMENDMENT AND EXCESSIVE FINES

184. Because of the criminal nature of Village of Babylon Code Section 365-26, Plaintiffs can suffer fines up to one-thousand dollars for the misuse of personal property.
185. The Eighth Amendment of the United States Constitution protects against unreasonable and excessive fines.
186. Defendants, and specifically as stated in open Court by Gerald Glass, Esq. on December 10, 2018, intend on utilizing daily fines to enforce Village of Babylon Code Section 365-26.

187. Upon information and belief, Village of Babylon Code Section 365-26 can result in fines amounting to thousand(s) of dollars a day.
188. Plaintiffs would have committed no further action but rather Plaintiffs inaction would allow such daily fines to accrue.
189. Defendants, all of them, know and have reason to know that such daily fines are excessive and extortionate in nature.
190. Defendants, and specifically as stated in open Court by Gerald Glass, Esq. on December 10, 2018, discussed utilizing daily fines as part of their package of tools to enforce Village of Babylon Code Section 365-26.
191. Defendants, and specifically as stated in open Court by Gerald Glass, Esq. on December 10, 2018, opined that the existence of the Lepper Family Treehouse was deserving of daily fines by Defendants utilizing Village of Babylon Code Section 365-26.
192. Plaintiffs need take no further action for Defendants to issue additional fines.
193. Plaintiffs need take no further action for Defendants to issue daily fines.
194. According to Defendants, and specifically as stated in open Court by Gerald Glass, Esq. on December 10, 2018, Defendants could simply observe and fine Plaintiff everyday he sought to defend himself in court.
195. According to Defendants, and specifically as stated in open Court by Gerald Glass, Esq. on December 10, 2018, Defendants could simply observe and fine Plaintiff everyday he sought to obtain a building permit from Defendants, the Village of Babylon.
196. Defendants, collectively, through their attorney and agent as Village Attorney, Gerard Glass did state in open Court on December 10, 2018 that the Village of Babylon did use

exorbitant fines to obtain property, or revenue or coerce action to which Defendants are not otherwise entitled.

197. Accordingly, Plaintiffs are damaged and seek enjoinder of the enforcement of Village of Babylon Code Section 365-26.

XIV. 42 U.S.C. §1983: "MONELL" CLAIM

198. Defendant elected officials, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control their employees, particularly Building Inspector Fellman in the administration of the Village of Babylon Code Section 365-26 the Lepper family has suffered injury and damage.
199. Defendant elected officials, jointly and severally, individually and collectively, were responsible for the administration and operation of the Village of Babylon.
200. Defendant elected officials, jointly and severally, individually and collectively, were responsible for policy and decision making in the Village of Babylon.
201. Defendant elected officials, jointly and severally, individually and collectively, actively established or permitted to exist a Village wide policy of denial of due process and equal protection in the administration and enforcement of the Village of Babylon Code, in this specific case Section 365-26.
202. Defendants, jointly and severally, individually and collectively, subjected Plaintiffs, the Lepper family, to selective enforcement of Village of Babylon Code Section 365-26 and disparate treatment from that afforded similarly situated property owners.
203. Defendant elected officials, jointly and severally, individually and collectively, failed to remediate the actions taken against the Lepper family for erecting their children's treehouse and continue to harass, threaten, and attempt to coerce the Lepper family into removing their children's treehouse.

204. Defendant elected officials, jointly and severally, individually and collectively, have continued to subject the Lepper family to continued prosecution for alleged violations of Village of Babylon Code Section 365-26 as part of a cover up for the unjustified and improper earlier prosecution and conviction of Plaintiff John Lepper for violating Village of Babylon Code Section 365-26 by erecting a treehouse of less than 90 square feet "lot area" for his infant children.
205. Defendant elected officials, jointly and severally, individually and collectively, knew, or should have known, that there was no system or procedure in place for reporting, investigating, or remediating incidents involving harassment of Village residents by means of the Village of Babylon Code other than this litigation.
206. Defendant elected officials, jointly and severally, individually and collectively, maintained a deliberate indifference to the human, civil, and constitutional rights of the Plaintiff Lepper family.

XV. STATE LAW CLAIMS

207. Defendants, jointly and severally, individually and collectively, had a duty not to subject Plaintiff John Lepper and the Lepper family to constitutional violations, summary punishment, improper and inappropriate charges of Babylon Village Code violations malicious prosecution, abuse of process, false and improper investigation.
208. Defendants, jointly and severally, individually and collectively, through their conduct, acts, and omissions acted outrageously and beyond the bounds of decency in (a) attempting to coerce Plaintiffs into removing a lawful children's treehouse from their property by threatening ongoing and continued legal proceedings with the potential for confiscatory fines and imprisonment; (b) filing unjustified and unsupportable criminal charges against and imposing

summary punishment and excessive fines upon Plaintiffs for allegedly violating an unconstitutional ordinance, Village of Babylon Code Section 365-26; (c) concealing and attempting to cover up the wrongs done to Plaintiffs; and defaming, slandering and failing to redress the grievances done to the Plaintiffs.

209. Defendants, jointly and severally, individually and collectively, violated the Plaintiff's rights secured under the United States Constitution and the New York State Constitution.

XVI. NEGLIGENCE

210. Defendants, jointly and severally, individually and collectively, had a duty to act reasonably and responsibly and not to act in a manner that would cause injury and/or harm or the threat of harm to the Plaintiff Lepper family.
211. Defendant Village of Babylon was negligent, careless, and reckless in the treatment of Plaintiffs by failing to train, supervise, discipline and investigate its employees involved in the instant matter.
212. Defendant Village of Babylon knew or should have known of its employees' propensities for the conduct which caused substantial and severe injury to the Plaintiffs.
213. Defendants acted negligently in violating the civil, Constitutional, and human rights of the Plaintiffs.

XVII. ABUSE OF PROCESS

214. Defendant Village of Babylon employed regularly issued legal process to compel Plaintiffs to remove their children's treehouse.
215. Defendants, jointly and severally, individually and collectively, intended to intent to do harm and cause damage to the Lepper family without excuse of justification.

216. Defendants, jointly and severally, individually and collectively, in order to obtain a collateral objective that is outside the legitimate ends of the process did cause a series of unfounded accusatory instruments to be issued against Plaintiff John Lepper.

XVIII. NEGLIGENCE AND/OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

217. Defendants, individually and/or collectively, jointly and/or severally, acted outrageously and beyond the bounds of decency in violating the civil rights and liberty interests of the Plaintiffs causing them to suffer pain, shame, humiliation and anguish.

218. The reprehensible, extreme and outrageous conduct of the Defendants, jointly and severally, individually and collectively, against Plaintiffs occurred with intent and full knowledge that their conduct would cause severe and extreme emotional and psychological harm to Plaintiffs.

219. Defendants did fail to investigate improper use of criminal process but, rather, Defendants began to conspire and cover up such actions by prosecuting criminal charges and threatening Plaintiffs with unjust and excessive fines and threatened loss of their property.

220. The Defendants knew or had reason to know that Plaintiffs were guilty of no wrongdoing.

221. Defendants, jointly and severally, individually and collectively, acted with knowledge and reason to know that their conduct would cause severe and extreme emotional and physical harm to Plaintiffs.

222. As a result, Plaintiffs suffered great pain, emotional degradation, loss of employment, shame, humiliation and anguish, causing them great distress and emotional agony.

XIX. DEFAMATION

223. The Plaintiff Lepper family is being harassed by the Village of Babylon and the individual defendants, to the extent that the Lepper family use of their property is being monitored and the curtilage of their property invaded without due process on what appears to be a daily basis for the purpose of attempting to fabricate charges of Babylon Village Code violations for further prosecution.

224. Whereas, as a result of said defamation, Plaintiffs continue to suffer from humiliation, loss of standing in the community, loss of self-esteem and public esteem, public disgrace and severe/extreme emotional distress.

XX. PRIMA FACIE TORT

225. Defendants, individually and/or collectively, jointly and/or severally, acted outrageously and beyond the bounds of decency in violating the civil rights and liberty interests of the Plaintiffs causing them to suffer pain, shame, humiliation and anguish.

226. The reprehensible, extreme and outrageous conduct of the Defendants, jointly and severally, individually and collectively, against Plaintiffs occurred with intent and full knowledge that their conduct would cause severe and extreme emotional and psychological harm to Plaintiffs.

XXI. INJURIES AND DAMAGES

227. As a direct and proximate result of the wrongful actions and inappropriate lack of action by the Defendants, jointly and severally, individually and collectively, Plaintiffs, particularly the infant Plaintiffs, have suffered injury and damages, emotional and psychological harm, including loss of educational opportunities, emotional injury, distress and pain, and incurred significant cost and expenses, including but not limited to legal fees, loss of good name and standing in the

community, public stigma, personal humiliation, social degradation, and other cost and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek an order of this honorable Court:

DECLARING Village of Babylon Code Section 365-26 unconstitutional and unenforceable as violating the rights of the Plaintiffs under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

PROHIBITING the Village of Babylon from issuing further accusatory instruments against Plaintiffs charging violations of Village of Babylon Code Section 365-26 for the existence of the Lepper family treehouse.

MANDATING the right to trial by jury for any alleged violations of Village of Babylon Code Section 365-26.

VACATING AND DISMISSING any convictions of Plaintiff John Lepper for violating Village of Babylon Code Section 365-26.

DIRECTING restitution of any fines already paid by or on behalf of the Lepper family for convictions of violating Village of Babylon Code Section 365-26 for erecting their children's treehouse.


AWARDING Plaintiffs compensatory, general, and punitive damages, costs, disbursements, and attorneys' fees from the Defendants.

All together with such other and further relief as to this Court shall deem just and proper.

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DATED AT Dix Hills, New York
December 16, 2018



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To: GERARD GLASS, Esq.
Babylon Village Attorney
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Babylon, New York 11702

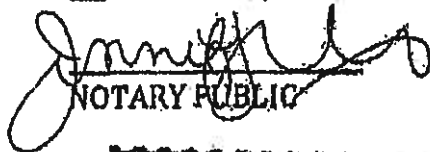
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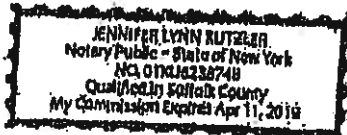
State of New York }
County of Suffolk } ss:

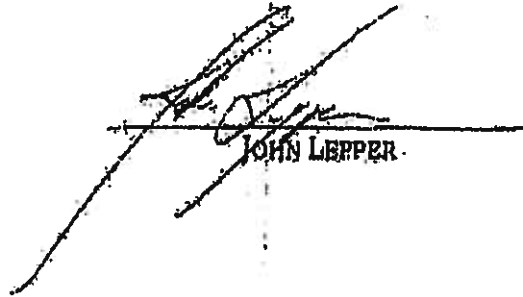
John Lepper duly affirming under the penalty of perjury deposes and says that I am the one of the Plaintiffs filing this Amended Verified Complaint and accompanying documents; that I have read the foregoing Amended Verified Complaint and know the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief.

Duly affirmed under penalty of
perjury on December 16th 2018

Sworn before me on the
16th of December, 2018


NOTARY PUBLIC




JOHN LEPPER

INDEPENDENT VERIFICATION

State of New York
County of Suffolk } ss:

Noelle Lepper duly affirming under the penalty of perjury deposes and says that I am the one of the Plaintiffs filing this Amended Verified Complaint and accompanying documents; that I have read the foregoing Amended Verified Complaint and know the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief.

Duly affirmed under penalty of
perjury on December 16th, 2018

Noelle Lepper
NOELLE LEPPER

Sworn before me on the
16th of December, 2018

Jennifer Lynn Kutzen
NOTARY PUBLIC

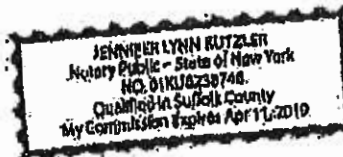


EXHIBIT “C”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Index No.: 2:18-cv-07011 JFB-GRB

Plaintiffs,

JURY TRIAL DEMANDED

-against-

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

Defendants.

-----X

**DEFENDANTS' AMENDED ANSWER AND COUNTERCLAIM
TO PLAINTIFFS' AMENDED VERIFIED COMPLAINT**

Defendants, VILLAGE OF BABYLON; and, RALPH SCORDINO, Mayor, KEVIN
MULDOWNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village
Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building
Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village
of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon, each
individually and in their official capacity, hereby answer the Amended Verified Complaint of the
plaintiffs, JOHN LEPPER and NOELLE LEPPER, individually, and as parents and natural guardians
of their infant children, B.J.L. and B.I., filed in the above-captioned matter on December 17, 2018,

and assert affirmative defenses and counterclaims as follows:

**ANSWERING EACH AND EVERY CAUSE
OF ACTION OF THE COMPLAINT**

FIRST: Denies allegations contained in paragraphs numbered "1," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "13," "14," "28," "29," "36," "37," "40," "41," "42," "43," "44," "45," "46," "47," "50," "51," "55," "57," "61," "62," "64," "65," "73," "74," "78," "84," "85," "89," "90," "107," "108," "109," "110," "112," "113," "114," "115," "116," "117," "118," "119," "120," "121," "122," "123," "124," "125," "126," "128," "130," "132," "134," "135," "136," "137," "138," "139," "140," "141," "142," "143," "144," "145," "146," "147," "154," "155," "156," "157," "158," "159," "161," "162," "163," "164," "165," "166," "167," "168," "169," "170," "171," "172," "173," "175," "176," "179," "180," "181," "182," "183," "185," "186," "189," "190," "196," "197," "198," "201," "202," "203," "204," "205," "206," "208," "209," "211," "212," "213," "215," "216," "217," "218," "219," "220," "221," "222," "223," "224," "225," "226" and "227" of the Amended Verified Complaint.

SECOND: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "15," "16," "17," "18," "19," "20," "21," "24," "25," "26," "27," "30," "31," "32," "35," "38," "39," "48," "49," "52," "53," "54," "56," "58," "59," "60," "63," "66," "67," "69," "70," "71," "72," "75," "76," "77," "79," "80," "81," "82," "83," "86," "87," "88," "91," "92," "93," "94," "95," "96," "97," "98," "99," "100," "101," "102," "103," "104," "105," "106," "111," "127," "177," "178," "184" and "191" of the Amended Verified Complaint.

THIRD: Denies allegations contained in paragraphs numbered "23," "33," "129," "133," "149," "150," "151," "152," "153," "160" and "174" of the Amended Verified

Complaint and refers all questions of law to the Court.

FOURTH: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "34," "148," "187," "188," "192," "193," "194," "195," "199" and "200" of the Amended Verified Complaint and refers all questions of law to the Court.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "68" of the Amended Verified Complaint and refers all questions of law to the Court, and denies that any accusatory instruments were defective.

SIXTH: Denies allegations contained in paragraphs numbered "207" and "210" of the Amended Verified Complaint and refers all questions of law regarding legal duty to the Court.

SEVENTH: Denies allegation contained in paragraph numbered "214" of the Amended Verified Complaint as vague.

DEMAND FOR JURY TRIAL

EIGHTH: Defendants demand a trial by jury for the non-equitable relief.

**FOR A FIRST, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:**

NINTH: That any injuries or damages sustained by the plaintiffs were occasioned through the negligence and culpable conduct on the part of the plaintiffs.

**FOR A SECOND, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:**

TENTH: That this Court lacks jurisdiction over the person or property of the answering defendants, VILLAGE OF BABYLON; and, RALPH SCORDINO, Mayor, KEVIN

MULDOWNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official capacity, in that the service of process was not made in accordance with the provisions of the law.

FOR A THIRD, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

ELEVENTH: That the party making claim lacks capacity to bring the action. Claims brought by and on behalf of the infant plaintiffs by John Lepper and Noelle Lepper are not properly made since the infants were not part of any transaction concerning the disposition of the permit or of the application to build the tree house and they have no standing to bring a claim where there were not part of any transaction with the defendants. Alternatively, John Lepper and Noelle Lepper are not proper parties to assert claim on behalf of the infants since there are counter-claims against them related to the alleged harm to the infants.

FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWELFTH: There is another action pending between the same parties for the same cause of action. There is a pending claim before the Justice Court in the Village of Babylon related to the pending fines wherein the plaintiffs have the same challenges to the fines and the ordinance the plaintiffs violated. Therefore, the Amended Verified Complaint should be dismissed.

**FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:**

THIRTEENTH: That the plaintiffs' Amended Verified Complaint fails to state sufficient facts to constitute a cause of action against these defendants.

**FOR A SIXTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:**

FOURTEENTH: That this Court lacks jurisdiction over the subject matter of this action inasmuch as there is no diversity of citizenship between the litigants as required by FRCP. There is no basis to the federal claims. The state claims asserted by the plaintiffs herein lack the requisite diversity of citizenship or damages to remain in federal court independently.

**FOR A SEVENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:**

FIFTEENTH: That all or part of the action is barred by the Doctrine of Collateral Estoppel or Res Judicata. The issue of the constitutionality of the ordinance challenged by the plaintiff herein was raised in proceeding in the Babylon Village Court. A determination by that court which is a court of competent jurisdiction found that the ordinance was constitutional and the plaintiff John Lepper was held liable for the charges against him in building the claimed tree house without filing a proper application for a permit and in violation with the zoning ordinances challenged by the plaintiff in their complaint.

**FOR AN EIGHTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:**

SIXTEENTH: The lawsuit brought by the plaintiffs is entirely without merit and is

frivolous, subject to sanctions.

FOR A NINTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SEVENTEENTH: That the party making claims failed to mitigate damages. Plaintiffs failed to build the tree house properly to comply with the zoning code of the Village of Babylon and failed to obtain a permit through the Building Department of the Village of Babylon. All claimed damages could have been avoided by plaintiffs by adhering to state and local building codes.

FOR A TENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

EIGHTEENTH: The plaintiffs' claims for punitive damages are barred.

FOR AN ELEVENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

NINETEENTH: The defendants are protected under a governmental immunity from claims of negligence. The defendants acted appropriately in carrying out village law and any claims of negligence against them are protected under immunity as allowed by law.

FOR A TWELFTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTIETH: These claims are not ripe for determination before the Federal Court.

FOR A THIRTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FIRST: The claims are barred by failure to serve a timely Notice of Claim pursuant to Sections 50-e and 50-i of the General Municipal Law. The plaintiffs failed to allow any time before filing the complaint to afford the Village of Babylon the opportunity to take a hearing

pursuant to 50-h of the General Municipal Law.

**FOR A FOURTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:**

TWENTY-SECOND: The claims are barred by the failure of plaintiffs to attend a hearing pursuant to Section 50-h of the General Municipal Law. No time was allowed before the complaint was filed for a 50-h hearing to take place. The plaintiffs failed to allow any time before filing the complaint to afford the Village of Babylon the opportunity to take a hearing pursuant to 50-h of the General Municipal Law.

**FOR A FIFTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:**

TWENTY-THIRD: Plaintiffs failed to exhaust their administrative remedies and have not completed the application for a permit and have not filed before the Zoning Board of Appeals. The plaintiffs did not complete the permit application. The plaintiffs failed to file proper plans and survey. The plaintiffs did not avail themselves to the administrative process through the Zoning Board of Appeals to address any claimed challenges to issues concerning the permit.

**AS AND FOR A COUNTERCLAIM AGAINST JOHN LEPPER
AND NOELLE LEPPER, THE DEFENDANTS VILLAGE OF
BABYLON; AND, RALPH SCORDINO, MAYOR, KEVIN
MULDOWNEY, DEPUTY MAYOR, ROBYN SILVESTRI,
VILLAGE TRUSTEE, TONY DAVIDA, VILLAGE TRUSTEE,
MARY ADAMS, VILLAGE TRUSTEE; STEPHEN FELLMAN,
VILLAGE OF BABYLON BUILDING INSPECTOR; SUZANNE
SCHETTINO, DEPARTMENT OF PUBLIC WORKS; GERARD
GLASS, ESQ., VILLAGE OF BABYLON ATTORNEY; AND
DEBORAH LONGO, PLANNING BOARD, VILLAGE OF
BABYLON, EACH INDIVIDUALLY AND IN THEIR OFFICIAL
CAPACITY, HEREBY ALLEGE:**

TWENTY-FOURTH: That if the plaintiffs B.J.L. and B.I. were caused to sustain damages at the time and place set forth in the plaintiff's Amended Verified Complaint through any

culpable conduct and/or negligence other than plaintiffs' own, and if said damages arose in whole or in part from the negligence of and/or culpable conduct of the defendants, VILLAGE OF BABYLON; and, RALPH SCORDINO, Mayor, KEVIN MULDOWNNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official capacity, and if any judgment is recovered herein by the plaintiffs B.J.L. and B.I. against the answering defendants, they will be damaged thereby and the answering defendants will be entitled to proportionate contribution and/or indemnity on the basis of the responsibility of the plaintiffs above named.

TWENTY-FIFTH: That if the plaintiffs B.J.L. and B.I. were caused to sustain damages at the time and place set forth in the plaintiff's Amended Verified Complaint through any culpable conduct and/or negligence other than plaintiffs' own, and if said damages arose in whole or in part from the negligence of and/or culpable conduct of the defendants, VILLAGE OF BABYLON; and, RALPH SCORDINO, Mayor, KEVIN MULDOWNNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official capacity, and if any judgment is recovered herein by the plaintiffs B.J.L. and B.I. against the answering defendants, the damages were caused by the failure of John Lepper and Noelle Lepper to build a safe tree house compliant with the building code of the Village of Babylon; to build a tree house that conforms to the set back

requirements from the front of the property as set by the building code; in failing to exhaust the remedies in the administrative process by filing a proper application for permit, proper plans and survey, and in failing to file an appeal to the Board of Zoning Appeals; in failing to show that the tree house is a safe structure with proper means of ingress and egress; without admitting to the allegations in the complaint, in building a tree house for children to use in an area that the plaintiffs claim is unsafe as set forth in their complaint and in making representations for the use of a tree house that fails to comply with local and state law and without obtaining a permit for the subject building.

WHEREFORE, the answering defendants, VILLAGE OF BABYLON; and, RALPH SCORDINO, Mayor, KEVIN MULDOWNNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official capacity, demand judgment dismissing the Amended Verified Complaint herein as to the answering defendants with costs, and further demand that the ultimate rights of the answering defendants and the plaintiffs as between themselves be determined in this action, and that the answering defendants have judgment over and against the plaintiffs for all or a part of any verdict or judgment which may be obtained herein by the

plaintiffs against the answering defendants, together with costs and disbursements of this action.

Dated: Mineola, New York
March 6, 2019

Respectfully submitted,

KELLY, RODE & KELLY LLP

BY:


ERIC P. TOSCA

Attorneys for Defendants
330 Old Country Road - Suite 305
Mineola, New York 11501
(516) 739-0400
Our File No.: PDG/EPT 148530-752

TO: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
33 Walt Whitman Road - Suite 310
Dix Hills, New York 11746
(631) 450-2515

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2019, I served a true copy of the foregoing Defendants' Amended Answer and Counterclaim to Plaintiffs' Amended Verified Complaint by mailing same in a sealed envelope, by first class mail with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

To: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
33 Walt Whitman Road
Suite 310
Dix Hills, New York 11746
(631) 450-2515



ERIC P. TOSCA
E-Mail: eptosca@krklaw.com

EXHIBIT “D”

2:18-cv-07011 JFB-GRB

United States District Court

Eastern District of New York

JOHN LEPPER AND NOELLE LEPPER, individually and as
parents and natural guardians of their infant children,
B.J.L. and B.I.,

Plaintiffs

-against-

VILLAGE OF BABYLON;
RALPH SCORDINO, Mayor, KEVIN MULDOWNEY, Deputy
Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA,
Village Trustee, MARY ADAMS, Village Trustee;
STEPHEN FELLMAN, Village of Babylon Building Inspector;
SUZANNE SCHETTINO, Department of Public Works; GERARD
GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO,
Planning Board, Village of Babylon,

Defendants

ANSWER TO DEFENDANTS' AMENDED COUNTERCLAIM

CORY H. MORRIS
LAW OFFICES OF CORY H. MORRIS
Attorney for Plaintiffs
VICTOR JOHN YANNACONE, JR., *of counsel*

ANSWER TO DEFENDANTS' COUNTERCLAIM

Plaintiffs JOHN LEPPER and NOELLE LEPPER, individually, and as parents and natural guardians of their infant children, B.J.L. and B.I., by Cory H. Morris, Principal Attorney in The Law Offices of Cory H. Morris, attorney of record for said Plaintiffs submits the following as and for an answer to Defendants counterclaim designated paragraph "Twenty-fourth" and of Defendants Answer and Counterclaim filed March 6, 2019 which states,

"TWENTY-FOURTH: That if the plaintiffs B.J.L. and B.I. were caused to sustain damages at the time and place set forth in the plaintiff s Amended Verified Complaint through any culpable conduct and/or negligence other than plaintiffs' own, and if said damages arose in whole or in part from the negligence of and/or culpable conduct of the defendants, Village of Babylon; and, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee, Mary Adams, Village Trustee; Stephen Fellman, Village of Babylon Building Inspector; Suzanne Schettino, Department of Public Works; Gerard Glass, Esq., Village of Babylon Attorney; and Deborah Longo, Planning Board, Village of Babylon, each individually and in their official capacity, and if any judgment is recovered herein by the plaintiffs B.J.L. and B.I. against the answering defendants ,they will be damaged thereby and the answering defendants will be entitled to proportionate contribution and/or indemnity on the basis of the responsibility of the plaintiffs above named."

Further, Plaintiffs JOHN LEPPER and NOELLE LEPPER, individually, and as parents and natural guardians of their infant children, B.J.L. and B.I., by Cory H. Morris, Principal Attorney in The Law Offices of Cory H. Morris, attorney of record for said Plaintiffs submits the following as and for an answer to Defendants counterclaim designated paragraph "Twenty-fifth" of Defendants Answer and Counterclaim filed March 6, 2019 which states,

TWENTY-FIFTH: That if the plaintiffs B.J.L. and B.I. were caused to sustain damages at the time and place set forth in the plaintiffs Amended Verified Complaint through any culpable conduct and/or negligence other than plaintiffs' own, and if said damages arose in whole or in part from the negligence of and/or culpable conduct of the defendants, VILLAGE OF BABYLON; and, RALPH SCORDINO, Mayor, KEVIN MULDOWNY, Deputy Mayor. ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official capacity, and if any judgment is recovered herein by the plaintiffs B.J.L. and B.I. against the answering defendants, the damages were caused by the failure of John Lepper and Noelle Lepper to build a safe tree house compliant with the building code of the Village of Babylon; to build a tree house that conforms to the set back requirements from the front of the property as set by the building code; in failing to exhaust the remedies in the administrative process by filing a proper application for permit, proper plans and survey, and in failing to file an appeal to the Board of Zoning Appeals; in failing to show that the tree house is a safe structure with proper means of ingress and egress; without admitting to the allegations in the complaint, in building a tree house for children to use in an area that the plaintiffs claim is unsafe as set forth in their complaint and in making representations for the use of a tree house that fails to comply with local and state law and without obtaining a permit for the subject building.

1. Plaintiffs deny each and every allegation of said paragraph Twenty-fourth and Twenty-Fifth of Defendants' Answer and Counterclaim, except to admit that said Defendants "each individually and in their official capacity," "will be damaged" "if any judgment is recovered herein by the plaintiffs B.J.L. and B.I. against the answering defendants."

**AS AND FOR AN AFFIRMATIVE DEFENSE TO
DEFENDANTS' COUNTERCLAIM**

2. Plaintiffs state that any liability and damages for which Defendants may be liable to the Plaintiffs is not subject to contribution or indemnification from the Plaintiffs.
3. Plaintiffs have not breached any duty which Defendants have identified which might establish they are joint tortfeasors with the Defendants or any one of them.
4. Plaintiffs have not contributed to their own injuries in any way by breaching any established duty.
5. Defendants have presented no evidence that they might be entitled to apportionment of fault.
6. Defendants have presented no evidence to indicate they might be entitled to contribution from the Plaintiffs pursuant to New York CPLR § 1401.
7. Plaintiffs have committed no wrongdoing which can establish liability for common law indemnification.
8. There is no basis for contractual indemnification of the Defendants by the Plaintiffs.

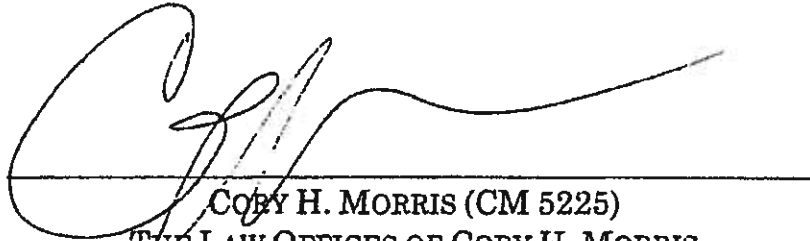
WHEREFORE Plaintiffs seek judgment DISMISSING Defendants' counterclaim all together with such other and further relief as shall be just and proper under the circumstances.

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4

DATED AT Dix Hills, New York

March 26, 2019



CORY H. MORRIS (CM 5225)
THE LAW OFFICES OF CORY H. MORRIS
Attorney for the Plaintiffs

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VICTOR JOHN YANNACONE, JR., (VY6405) *of counsel*

Phone: (631) 475-0231

Email: barrister@yannalaw.com

To: ERIC P. TOSCA, ESQ.
Attorney for Defendants
Kelly Rode & Kelly, Esqs.
330 Old Country Road
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Fax: 516-739-0434
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EXHIBIT “E”

Case 2:21-cv-00014-BMC Document 2 Filed 01/04/21 Page 1 of 3 PageID #: 70

AO 440 (Rev. 06/12) Summons in a Civil Action

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT★ JAN 04 2021 ★

for the

Eastern District of New York

LONG ISLAND OFFICE

JOHN LEPPER

Plaintiff(s)

v.

VILLAGE OF BABYLON; RALPH SCORDINO,
KEVIN MULDOWNNEY, ROBYN SILVESTRI, TONY
DAVIDA, MARY ADAMS, STEPHEN FELLMAN,
SUZANNE SCHETTINO, GERARD GLASS, et al

Defendant(s)

CV-21 0014

Civil Action No.

COGAN, J

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) VILLAGE OF BABYLON; Village of Babylon Mayor, Estate of RALPH SCORDINO, KEVIN MULDOWNNEY, Dep. Mayor, ROBYN SILVESTRI, Trustee, TONY DAVIDA, Trustee, MARY ADAMS, Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official capacity, and John and/or Jane Doe, unnamed, unidentified complainants, 153 West Main Street, Babylon, NY 11702

A lawsuit has been filed against you.

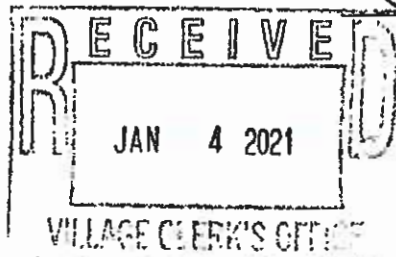
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: CORY H. MORRIS (CM 5226)
135 Pinelawn Road, Suite 250s
Melville NY 11747

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

JAN - 4 2021



Signature of Clerk or Deputy Clerk

Case 2:21-cv-00014-BMC Document 2 Filed 01/04/21 Page 2 of 3 PageID #: 71

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Case 2:21-cv-00014-BMC Document 2 Filed 01/04/21 Page 3 of 3 PageID #: 72

Summons-Addendum

ADDENDUM

VILLAGE OF BABYLON; Village of Babylon Mayor, Estate of RALPH SCORDINO, KEVIN MULDOWNEY, Dep. Mayor, ROBYN SILVESTRI, Trustee, TONY DAVIDA, Trustee, MARY ADAMS, Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official capacity, and John and/or Jane Doe, unnamed, unidentified complainants,

153 West Main Street, Babylon, NY 11702

Case 2:21-cv-00014-BMC Document 1 Filed 01/04/21 Page 1 of 67 PageID #: 1

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

2:21-cv-

★ JAN 04 2021 ★

LONG ISLAND OFFICE

United States District Court

Eastern District of New York

CV-21-0014

JOHN LEPPER,

Plaintiffs

-against-

COGAN, J

VILLAGE OF BABYLON;

THE ESTATE OF RALPH SCORDINO, Former Village of Babylon
Mayor, Village of Babylon Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY
DAVIDA, Village Trustee, MARY ADAMS, Village Trustee;
STEPHEN FELLMAN, Village of Babylon Building Inspector;
SUZANNE SCHETTING, Department of Public Works; GERARD
GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO,
Planning Board, Village of Babylon,

Defendants

VERIFIED COMPLAINT

 ORIGINAL

LAW OFFICES OF CORY H. MORRIS
Attorney for Plaintiffs
VICTOR JOHN YANNAONE, JR., of counsel

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PLAINTIFF DEMANDS A TRIAL BY JURY

PRELIMINARY STATEMENT

This is a civil action seeking a declaratory judgment, injunctive relief and equitable relief against, and compensatory, general, and punitive damages, costs, disbursements, and attorneys' fees from, the Defendants for violating Plaintiff's civil, constitutional, and human rights, under the Fourth, Fifth, Eighth and Fourteenth Amendment to the United States Constitution and New York State Law; and to recover compensatory, general, and punitive damages, costs, disbursements, and attorneys' fees from the Defendants for their negligence, abuse of process, negligent and/or intentional infliction of emotional distress, and prima facie tort.

INTRODUCTION

1. Plaintiff, John Lepper, alleges that Defendants, jointly and severally, individually and collectively, intentionally, knowingly, wantonly, negligently, and/or recklessly, sought to and did wrongfully deprive him of his civil, constitutional, and human rights by committing acts under color of law to deprive him of his civil, constitutional, and human rights.
2. Plaintiff, John Lepper, alleges that Defendant Village of Babylon was negligent in training, hiring and supervising its Village of Babylon Attorney, Defendant Gerard Glass, and was deliberately indifferent to the actions of Gerard Glass who, among other things, sought to profit off of the malicious prosecution of Plaintiff in derogation of prosecutorial canons.

3. Plaintiff, John Lepper alleges that Defendant Village of Babylon is liable to the Plaintiffs for abuse of process, malicious prosecution, retaliation and for conspiring to condone and encourage such civil rights violations together with conspiring to and violating Plaintiff's Civil Rights.
4. Defendant Village of Babylon conspired in prosecuting Plaintiff, an innocent taxpayer, in the hiring and supervising its employees, inclusive of Defendant Gerard Glass, who profited enormously from the same prosecution and being sued as a Defendant under Docket No. 18-cv-7011.
5. Defendants, individually and collectively, knew and had reason to know that the seizure, false prosecution, threats against Plaintiff, tickets over "treehouse without a permit" and retaliation against Plaintiff, discussed further herein, would cause damages and were intended to silence the Plaintiff at enormous costs to the Village of Babylon taxpayer.
6. Accordingly, Defendant Village of Babylon is liable to the Plaintiffs for abuse of process, malicious prosecution, and for conspiring to condone and encourage such civil rights violations and for conspiring to violate Plaintiff's Civil Rights.
7. As a result of the Defendants' actions (or lack thereof), Plaintiff John Lepper suffered emotional scarring and suffering, and incurred significant cost and expenses due to the Defendants' actions, including but not limited to: substantial legal fees, loss of good name and standing in the community, emotional distress and other cost/expenses.

JURISDICTION AND VENUE

8. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331 and 1343.
9. This Honorable Court is requested to exercise supplemental jurisdiction with respect to Plaintiff's State Law claims pursuant to 28 U.S.C. §1367.
10. This action is brought pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985, and 42 U.S.C. § 1986.
11. This action is also brought pursuant to the Declaratory Judgment Act, under 28 U.S.C. §§ 2201–2202, to address the specific and anticipated harm Plaintiffs and all other similarly situated residents within the Village of Babylon.
12. Declaratory relief is necessary whether or not Defendant Village of Babylon discontinues open prosecution against John Lepper so long as the threat of prosecution for violation of Village of Babylon Code Section 365–26 continues to exist.
13. Venue in the Eastern District of New York is proper under 28 U.S.C. § 1391, based on the fact that the place where the events and violations herein alleged occurred was in Suffolk County, New York.

ADMINISTRATIVE PROCEEDINGS AND TIMELINESS

14. This action has been commenced within the three-year statute of limitations applicable to federal civil rights actions brought pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985 and 42 U.S.C. § 1986.

15. There are no effective New York state or federal administrative remedies available to the John Lepper.
16. Plaintiff has exhausted any potentially effective administrative remedies.
17. On or about March 10, 2020 Plaintiff John Lepper filed a Second Notice of Claim against the Village of Babylon.
18. Plaintiff John Lepper availed himself of the General Municipal Law Section 50-H for the purpose of an examination.
19. Defendants refused to adjust the claim and more than ninety (90) days have passed.

PARTIES

20. Plaintiff, JOHN LEPPER is a citizen of the United States, an Honorably discharged United States Marine presently employed as a member of the Fire Department of the City of New York and is a resident of the Incorporated Village of Babylon, Suffolk County, New York.
21. John Lepper is a lawful owner of 59 Cockenoe Avenue, a corner lot of 7,575 square feet (0.1739 acres) with 50.50 feet frontage along Cockenoe Avenue, a 50 foot public roadway, and 150 feet frontage along Wampum Road, a 33 foot public roadway, in the Incorporated Village of Babylon, in the Town of Babylon, Suffolk County, New York and identified on the Suffolk County Tax Map as parcel 0102-004.00-01.00-100.00. The property appears in its present configuration as Lots 19B & 19C in Block F as shown on Map of Sampwam

Park-Annex filed on October 31, 1921 as Map No: 758 in the Incorporated Village of Babylon, Town of Babylon, Suffolk County, New York (hereinafter referred to as the "Subject Property").

22. Infant B.J.L. is a six-year-old minor and the natural child born of the union of John Lepper and Noelle Lepper.
23. Infant B.L. is a five-year-old minor and the natural child born of the union of John Lepper and Noelle Lepper.
24. At all times relevant in this Complaint, and upon information and belief, Defendant Village of Babylon, is a recipient of federal funding and was a recipient of federal funding at the time of the events complained of herein.
25. Defendant Village of Babylon is an incorporated Village located within the Town of Babylon in Suffolk County, New York.
26. Defendant Village of Babylon is governed by an elected Mayor and four elected Trustees, collectively the Babylon Village Board.
27. According to information posed on the Village of Babylon website at <http://www.villageofbabylonny.gov/> Defendant Ralph Scordino, was the duly elected Mayor and has died before the date of this complaint and Defendant Mary Adams is now the Mayor, Defendant Kevin Muldowney, is the Deputy Mayor, and Defendant Robyn Silvestri, Defendant Tony Davida, Dominic Bencivenga and Anthony Cardali were/are Village of Babylon Trustees.

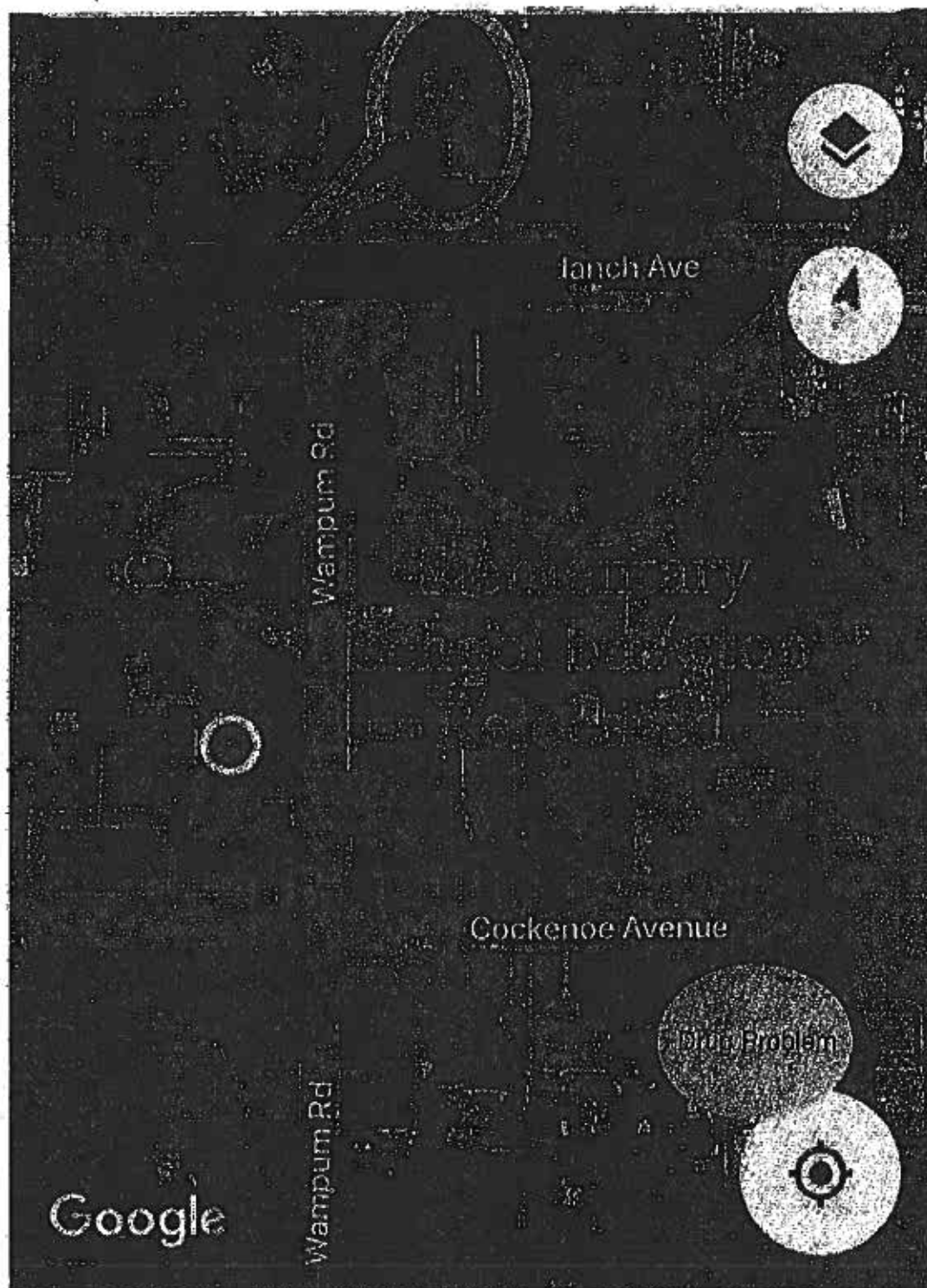
28. Upon information and belief, Defendant Stephen Fellman is the Village of Babylon Building Inspector; Defendant Suzanne Schettino, directs the Department of Public Works; Defendant Gerard Glass, Esq. is the Village of Babylon Attorney; and Defendant Deborah Longo, is involved in administration of the Village of Babylon Planning Board.
29. All of the individual named Defendants are being sued in both their individual and official capacities.

THE FACTS

30. This is the second lawsuit filed by John Lepper against these actors, the first seeking injunctive relief related to the pending destruction and forcible removal of the treehouse discussed herein and filed under Docket Number 18-cv-7011:
31. In April, 2018, Plaintiff, JOHN LEPPER, found a syringe and a hypodermic needle which he reasonably presumed to be utilized in illegal drug use, in his front yard when he was playing with his children. He informed his neighbors immediately and was outspoken in trying to find a remedy to shield his children from potential disease and harm caused by used hypodermic needles.

THE CHILDREN'S TREEHOUSE

32. The following is a true and accurate aerial view of the Lepper property and its surrounding neighborhood identifying the location where the hypodermic needle was found.



33. On or about May 3, 2018, Plaintiff John Lepper began to utilize timbers from an old boat house that was destroyed in Superstorm Sandy to create a treehouse to insulate his children from the hypodermic needles he found in and around his property at 59 Cockenoe Avenue within the Village of Babylon.
34. The following Lepper family neighbors can see the treehouse from their property: Joe and Joanne Mineo and their sons M.M. and N.M.; Pay and Keirsten Murphy and their daughter G.; Kevin and Lyndsey and their children A. and S.; Joe and Katelyn and their two pre-school-age children, all of whom live on Cockonoe Ave; and Mike And Josephine Domingo and their three college-age daughters who live on Wampum Rd.
35. By letter dated May 10, 2018, Village of Babylon Building Inspector Stephen Fellman informed Mr. Lepper that "It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit."
36. Village of Babylon Code § 365-26, § A, states: "No building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector. The Building Inspector shall require that the application for a permit and the accompanying plot plan, plans and specifications shall

contain all information necessary to enable him to determine whether the proposed building addition or structural alterations or change of use to an existing building comply with the provisions of this chapter and Chapter 171, Flood Damage Prevention, where applicable.”

37. Village of Babylon Code § 365–26 C(3) states “A building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet.”
38. In response to the May 10, 2018 letter from Defendant Fellman, Plaintiffs stopped work on the treehouse for their children.
39. Upon information and belief, Defendant elected officials, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee and Mary Adams, Village Trustee were jointly and severally, individually and collectively, responsible for allowing such notice to be sent to Plaintiff.
40. Defendant elected officials, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee and Mary Adams, Village Trustee were jointly and severally, individually and collectively, responsible for the continuing violations, retaliation, and constitutional violations against Plaintiff.

JOHN LEPPER’S APPLICATION

41. On or about May 21st, 2018, Plaintiff John Lepper visited the Building Department office of Defendant Village of Babylon;

completed a building permit application and submitted a front elevation / framing drawing with a copy of a recent survey of the Lepper Family Home, a copy of which is annexed hereto and made a part of this complaint designated Exhibit 1.

42. An unidentified Building Department employee, "Jane Doe", to whom Plaintiff John Lepper submitted the application commented that she usually did not receive such a detailed drawing from homeowners.
43. While at the Village of Babylon Building Department on or about May 21, 2018, Plaintiff John Lepper spoke with another employee of Defendant Village of Babylon, Holly Zappala, and told her that a used hypodermic needle was found on his property, and other used hypodermic needles were being found in the area and that he had concerns for the well-being of his family.
44. On or about May 21, 2018, while at the Village of Babylon Building Department office, John Lepper spoke with another employee of Defendant Village of Babylon, Holly Zappala, and told her that he had found a used hypodermic needle on his property, and other used hypodermic needles were being found in the immediate neighborhood of his property and that he had concerns for the well-being of his family.
45. Ms. Zappala told Plaintiff John Lepper that Defendant Village of Babylon was aware of drug-related crimes and the presence of hypodermic instruments prior to April, 2018 and that she and the Village of Babylon administration may be

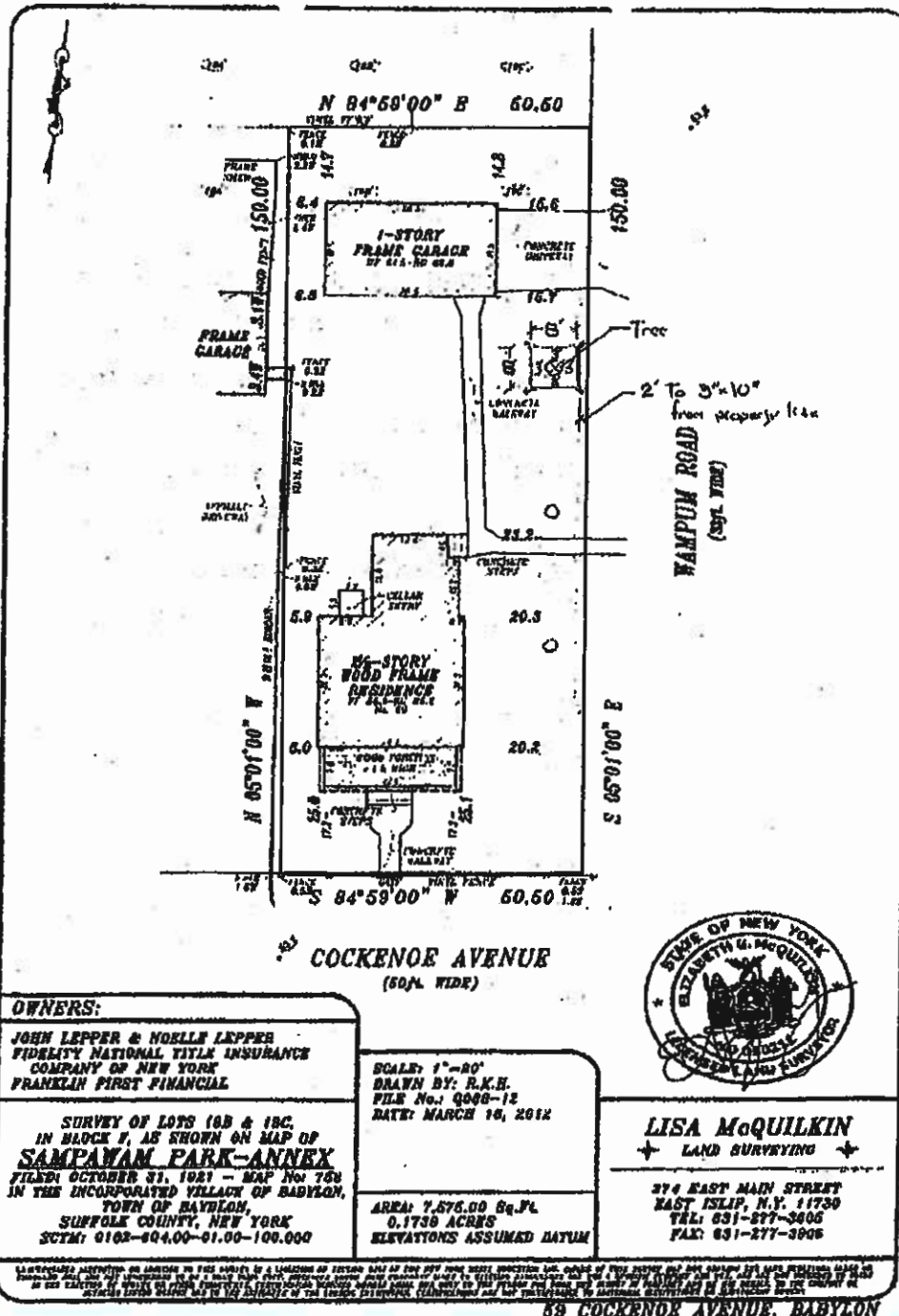
aware of criminal activity occurring on the subject premises and toward the Lepper Family.

46. Plaintiff John Lepper, confident he was protecting his family and speaking out toward remedying the crime occurring on his property and the scourge of heroin in his community, spoke to and informed everyone present in the building department on May 21, 2018 that it was his intention to build the treehouse for his son's birthday on July 7th, 2018 to allow his son the liberty and free use of the subject premises while maintaining a safe distance from the criminal activity in the neighborhood and the larger criminal narcotic problem known to the Village of Babylon.
47. The following is a true and correct copy of the survey of the Lepper property indicating the location of the children's treehouse:

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01/23/2013 08:38 FAX

0002



48. Upon information and belief, Defendants jointly and severally, individually and collectively, failed to act upon or even acknowledge Plaintiffs' efforts to comply with the Village of Babylon Code.

OTHER STRUCTURES IN THE VILLAGE OF BABYLON

49. For example, Defendants actually responded to others similarly situated who attempted to comply with the code, such as the application of 99 Park Avenue, Village of Babylon, County of Suffolk, State of New York:

VILLAGE OF BABYLON
133 West Main Street
Babylon, New York 11702
(631) 668-1300
BUILDING DEPARTMENT
BUILDING PERMIT FORM

Application is hereby made to Code Enforcement Official (Building Inspector) of the Village of Babylon, NY, for the approval of plans and specifications to build or install as herein described. The applicant agrees to comply with all the provisions of the code of the Village of Babylon and/or any other applicable Federal, State and Local codes.

NOTE: Survey or site plans must accompany permit application. For commercial or industrial applications, consult the Village of Babylon Planning Board.

Permit(s) requested (check one or more below):
Reference refer to questions on right that must be answered.

Building Permit
☐ Commercial ☐ Industrial ☐ Residential
☐ Main Building ☐ Addition
☐ Accessory Building ☐ Addition
☐ Interior Alteration ☐ Addition 1-8
☐ Two-Family Special Permit 1-3, 7, 8
☐ Change of Use or Occupancy
☐ Fire Damage Repair 1-3, 8
☐ Porch 6, 7
☐ Board of Appeals 1-3, 7, 8
☐ Scaffolding ☐ In-Ground ☐ Above-Ground
4 foot safety fence around 1-3, 7, 8
☐ Demolition (Yard only 6 more) 1-3, 7, 8
☐ Underground Work Installation (below plumbing permit) 1-3, 8, 9
☒ Other - Explain 1-8

102-1-12 Section Block Lot Flood Zone
Estimated Value of Construction \$ Per
Permit Number:
Current Zoning A-9 Approved By: Date Checked:
Permit Application Denied: Why?

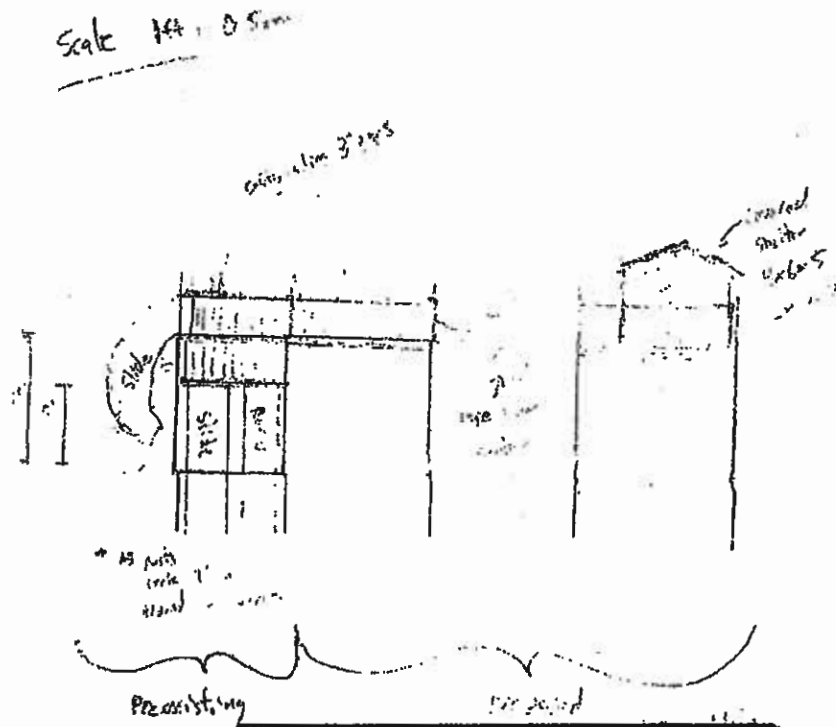
Is this permit a result of a Zoning Board of Appeals approval? ☐ Yes ☐ No
If yes, what conditions, if any, were set:
Board of Appeals Case #:
Pre-site inspection made by: Date: 6/26/20
Approved for issuance of Permit: Date: 6/26/20
Issued by: Date: Checked by:

Certificate of Occupancy #

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.
1. PRESENT USE of property: Single Family Home
2. PROPOSED USE: Addition of a detached living set
3. DESCRIPTION OF PROPOSED WORK: Add addition to current
4. F.O.C. AREA to be constructed or altered: 36 x 48 80.5 x 133.8 Total Square Feet
5. SIZE of property (136' x 134') = 24,644 sq. ft. or 0.57 Acres
6. HEIGHT of building from average grade to highest point: 12 Feet
7. PROPERTY LOCATION: 99 Park Ave. Babylon, NY 11702
8. ORIGINAL CERTIFICATE OF OCCUPANCY #
Certified as: **APPROVED**

RECEIVED
JUN 25 2020
VILLAGE OF BABYLON
BUILDING DEPARTMENT

50. Upon information and belief, persons like Thomas C. Bruckner, submitted handwritten drawings such as the following that were acted upon while Plaintiff's were not:

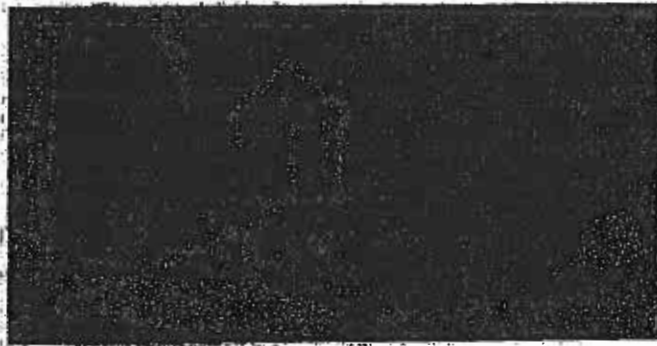


51. Defendants, jointly and severally, individually and collectively, knew and/or had reason to know that the Plaintiff sought to use their real-property in a manner that would contribute to and benefit the education and personal growth of their infant children.
52. Defendants, jointly and severally, individually and collectively, never intended to act upon Plaintiff's building permit application.

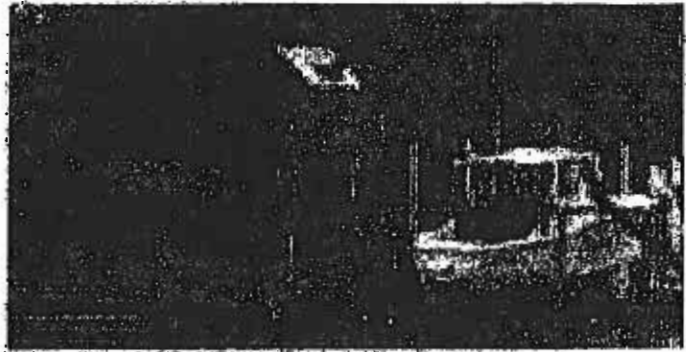
53. Defendants, jointly and severally, individually and collectively, apparently intended to take advantage of the voluntary, but not legally required, application filed by John Lepper for a permit to construct a tree house for his children as a vehicle to charge Plaintiffs with violations of Village of Babylon Code Section 365-26 and collect fines from John Lepper by simply refusing to consider and act upon the application by Plaintiff, John Lepper.
54. On June 15, 2018, Plaintiff John Lepper called the Village of Babylon Building Department to check on the status of his application and was told by an unidentified employee, Jane Doe, that no determination had been made as to whether Mr. Lepper's treehouse was in violation of the town code.
55. Plaintiff John Lepper immediately ceased construction and assembly of the partially fabricated treehouse as soon as he had been ordered to do so by Building Inspector Fellman.
56. Determined to either delay construction of an innocuous and code-compliant treehouse solely for the benefit of minor children, or harass and intimidate the Lepper family by destroying their infant son's eagerly anticipated birthday present, the Defendants, jointly and severally, individually and collectively, refused to issue the appropriate building permit or withdraw the "stop work" order.
57. Within hours of his son's birthday, Plaintiffs John decided to complete the treehouse and raise his children in the manner and safe-guard them from what he had already advised the Defendants was the scourge of drug abuse and the criminal

activity known to be occurring in his neighborhood and already visited upon his property.

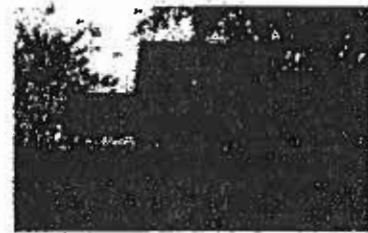
58. Mr. Lepper's neighbor had a similar structure in the air, abutting the property line, and Village of Babylon officials know about the same structure yet chose to prosecute John Lepper not his neighbor or others.
59. In 18-cv-7011, John Lepper presented photographic evidence to the Defendants and this Honorable Court that a number of treehouses and similar structures existed throughout the Incorporated Village of Babylon but not subject to the onerous requirements imposed upon John Lepper.
60. Other treehouse/unpermitted structures may be placed close to the water and perhaps may incur maritime violations should the Defendants peer deep enough into this intellectual abyss that continues to persist with respect to the Lepper Family Treehouse and, specifically, John Lepper.



61. The following is a true and accurate photograph of a similar such structure existing within the Village of Babylon, County of Suffolk, State of New York:



62. While these treehouse type structures, mostly utilized by children as part of Americana—that pursuit of happiness for which the United States of America professed belongs to all—come in all shapes and sizes and nearly all of them do not have building permits:



63. The following is a true and accurate photograph of a another such structure existing within the Village of Babylon, County of Suffolk, State of New York that does not seem to be a treehouse but most certainly abuts the property line and appears to have a finished roof and siding, yet has not been subject to the onerous requirements, prosecutions, fines or



threats imposed upon John Lepper and his family, as considered in Docket No: 18-cv-7011:

THE PROSECUTION OF JOHN LEPPER

64. On July 19, 2018, John Lepper received by certified mail three accusatory instruments dated July 11th, 12th & 13th each of which stated John Lepper was in violation of Village of Babylon Code § 365-26 for construction of a treehouse without a permit.
65. In response, on July 19, 2018, Plaintiff John Lepper immediately visited the Village of Babylon Building Department to inquire about the three summons he had received. He was told that he needed to make an appointment with Building Inspector Fellman and a meeting was scheduled for July 24, 2018.
66. Plaintiff John Lepper met with Defendant Building Inspector Fellman on July 24, 2018 and asked Defendant Building Inspector Fellman about each essentially identical citation which merely concluded that a "treehouse" violated Village of Babylon Code § 365-26. In response, Defendant Building Inspector Fellman stated that Mr. Lepper owed \$250 for the first accusatory instrument, \$500 for the second accusatory instrument and \$1,000 for the third accusatory instrument.
67. Plaintiff John Lepper met with Defendant Building Inspector Fellman on July 24, 2018 and asked Defendant Building Inspector Fellman about each essentially identical citation which merely concluded that a "treehouse" violated Village of

Babylon Code § 365-26. At that time, Mr. Lepper had not received any notice of action on his application or any notice that he was in violation of the Code for providing a treehouse for his children.

68. In response, Defendant Building Inspector Fellman stated that Mr. Lepper owed \$250 for the first accusatory instrument, \$500 for the second accusatory instrument and \$1,000 for the third accusatory instrument.
69. Plaintiff John Lepper protested to Defendant Building Inspector Fellman that not only were such fines unwarranted and excessive but that no prior notice of any violation had been provided to the Lepper family.
70. Building Inspector Fellman told Mr. Lepper to resolve the matter in Court on August 14, 2018.
71. Upon information and belief, Defendant Village of Babylon is more concerned with punishing taxpaying residents and extorting unconscionable fines from them for questionable violations of obscure and arcane, vague and ambiguous ordinances extracting fines out of law abiding resident property owners than providing municipal services such as promptly processing an application for a building permit.
72. Among the parents and children who visited the Treehouse prior to August 14 hearing were: Joe and Joanne Mineo and their sons, M.M. age 14 and N.M. age 16; , Pat and Kirsten Murphy and their daughter G.M., age 7; Terri McSweeney and Cindy McSweeney with E.M., age 7 and P.M., age 5; Steve Kazda and Amanda Kazda and their sons, J.K., age 6

and J.K. age 4; Mike Columbia and Christina Columbia and their daughters, C.C., age 6 and C.C., age 4; Mike Pagamo and Doreen Pagamo and M.P., age 8 and M.P., age 6; Charlie Lepper and Deena Lepper and their children, J.L., age 14; J.L., age 10, and C.L., age 8; a 93 year old WWII veteran, and Barbra who is over 65 years of age.

VILLAGE JUSTICE COURT PROSECUTION I

73. Plaintiff John Lepper who is a New York City firefighter sought a continuance of the hearing scheduled for August 14, 2018 from the afternoon session of the Court to the evening session in order for him to attend a memorial service for a brother firefighter who had died of illnesses from service at the 9/11 scene. Village Judge John T. Rafter denied the request and Firefighter Lepper was forced to leave the Memorial service before it was completed, arriving in Court at precisely 1400 hours still in his Class A uniform.
74. Village Judge John T. Rafter and Defendant Gerard Glass, the Babylon Village attorney acting as the prosecutor both knew that Mr. Lepper was unrepresented by counsel, and that he was facing fines which might amount to \$1,750 together with court costs and the possibility of continued and continuing prosecution, yet at no time did Village Judge Rafter or Village Attorney Glass ever warn the Defendant or advise him not only of his right to counsel, but because of the questionable nature of the charges and the circumstances of the prosecution the real need to consult an attorney before proceeding any further in his own defense.

75. Upon information and belief, the wife of Village Judge John T. Rafter works with the complainant who instigated the prosecution of the Lepper Family for erecting a treehouse for their children and the children of the neighborhood.
76. Upon information and belief, Defendant elected officials, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee and Mary Adams, Village Trustee conveyed to Village Justice John Rafter and other employees of Defendant Village of Babylon such as Building Inspector Fellman their desire to collect money from fines following convictions of Village of Babylon residents who had the temerity to challenge the judgment of Defendant Building Inspector Fellman that a violation of Village of Babylon Code Section 365-26 existed.
77. Defendants, jointly and severally, individually and collectively, engaged in this course of conduct to raise revenue and receive monies to which Defendant Village of Babylon would not otherwise be entitled.
78. On or about August 14, 2018, Stephen Fellman, as Babylon Village Building Inspector wrote to Mr. Lepper declaring that "Per § 116 Unsafe Structures of the International Building Code the tree house at the above referenced premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy is issued."
79. There is no substantial credible evidence that the Village of Babylon ever adopted the International Building Code nor incorporated its § 116 as part of the Village of Babylon Code.

80. In contrast to an John Lepper's certification of an engineer, to date, no substantial credible evidence has ever been presented showing that the Lepper family treehouse is in any way unsafe for its intended use, an arboreal playhouse, by the Lepper children and other children.

THE VILLAGE COURT PROCEEDINGS II

81. Defendant Village Attorney Glass requested an adjournment of the hearing scheduled for September 4, 2018 and Village Judge Rafter issued a verbal "stop work" order and asked Mr. Leper "to unplug the light." Then he adjourned the case to September 18, 2018.
82. Upon information and belief, on September 18, 2018, Village Judge Rafter learned that the office of Defendant Village of Babylon Mayor had received a complaint regarding John Lepper.
83. Upon information and belief, the late Defendant Mayor Ralph Scordino played golf with Village Judge John T. Rafter and discussed matters pending in the Village Court, including the prosecution of John Lepper.
84. Village Judge Rafter never informed Mr. Lepper, who was appearing pro se without benefit of counsel, of his rights to receive information about the complaint and the complainant; his right to challenge the accusatory instruments that merely stated, "Tree House" and were unsigned as legally insufficient.

85. Nevertheless, Village Judge Rafter did inquire of Mr. Lepper, pro se, about his efforts at complying with the Village of Babylon Code § 365-26 and the permit application which Mr. Lepper voluntarily filed.

86. Mr. Lepper informed Village Judge Rafter that his building permit application had been accepted by the employees of the Village of Babylon Building Department.

87. The following interaction took place between Mr. Lepper and Village Judge:

JUDGE RAFTER: Okay . Did you have an understanding of what the purpose of the permit is?

MR. LEPPER: Yes sir .

JUDGE RAFTER: What was your understanding of what the purpose of the permit was?

MR. LEPPER: A construction permit was required for a structure being put up according to building code 365-26 it's not required for under 90 square feet. And I explained that to Mr. Fellman .

JUDGE RAFTER: I will interpret the code, sir .

MR. LEPPER: Okay .

JUDGE RAFTER: Neither you nor Mr. Fellman will interpret the code. (Trial transcript of September 18, 2018, 10:3-23:)

88. Already, Village Judge Rafter was imputing fault on the pro se Defendant, John Lepper who had attempted to comply with what was a patently vague and ambiguous ordinance:

JUDGE RAFTER: Did you have an understanding of that before you undertook the construction?

MR. LEPPER: Not exactly, sir. Because I did not think that a permit was required for what I was putting up. (Trial transcript September 18, 2018, 11:12-19.)

89. Village Judge Rafter continued to make the case for the prosecutor, Defendant Village Attorney Glass, who at no time objected to the line of inquiry of the accused, Mr. Lepper:

JUDGE RAFTER: Did you contact the building department before you began construction or even contemplated construction of a tree house?

MR. LEPPER: Yes. On the 19th when I submitted the application. Prior to the platform no, sir. I did not think a permit was required for a tree house. I was not sure. (Trial transcript September 18, 2018, 12:2-14)

90. Rather than credit the sworn testimony of John Lepper. A pro se Defendant, and presumed innocent until proven guilty beyond reasonable doubt, Village Judge Rafter continued to push the burden onto Mr. Lepper who provided sworn evidence that he submitted a permit application prior to construction and prior to the issuance of any accusatory instrument by Village of Babylon:

JUDGER RAFTER: What is the basis of your objection?

MR. LEPPER: That was submitted on May 19th after I received the letter from Mr. Fellman regarding construction of the tree house without a permit. That was accepted by the office upstairs on May 19th and it was complete.

JUDGE RAFTER : You note there is no date on this. Do you have any proof as to when it was received?

MR. LEPPER: I was given a copy of the drawing I made and the survey that it was received. (Trial transcript September 18, 2018, 35:7-23)

91. Determined to convict the pro se Defendant John Lepper, Village Judge Rafter interrupts Defendant Village Attorney Glass when questioning Defendant Building Inspector Fellman during the trial about Mr. Lepper's contention that the Lepper Family Treehouse did not require a permit:

MR. GLASS: Mr. Fellman, it's your contention that under the Babylon Village code 365-26 there was no building permit for this structure -- this tree house, correct?

MR. FELLMAN: Correct.

MR. GLASS: Is there any provision of the Babylon Village code that would exempt one in the Village of Babylon from having to obtain a building permit based up on the facts you have testified to?

JUDGE RAFTER: Mr. Glass, I think that calls for a conclusion of law. So I am not going to permit him to answer that.

MR. GLASS: Okay. I have nothing further.

JUDGE RAFTER: You can ask in his opinion as a violation of the code and then set forth the facts upon which he bases his opinion. And then I would make the ultimate determination.

MR. GLASS: Judge, perhaps this should be the question then. Is there any provision of the code that exempts tree houses from obtaining a building permit?

MR. FELLMAN: No.

MR. GLASS: Okay. I have nothing further judge. (Trial transcript September 18, 2018, 39:11-25, 40:2-22)

92. Most telling is the testimony from Defendant Building Inspector Fellman that “we can issue violations every 24 hours.” (Trial transcript September 18, 2018, 45:11–12)
93. Village Judge Rafter convicted John Lepper by Order dated October 17, 2018 yet, as was stated on the record on November 20, 2018, did not recuse himself or allow further inquiry into his wife’s relationship with the complainant who, upon information and belief, submitted a complaint against the Lepper Family Treehouse.
94. In his decision, Village Judge Rafter stated that the “testimony of Stephan Fellman...established that he visited the premises in question on May 9, 2018, following receipt of a complaint in the Mayor’s office that a treehouse was being constructed,” yet no such complaint was ever shown to Mr. Lepper although he requested a copy on several occasions, nor was it produced during the trial.
95. To date no such complaint has been produced albeit it is known and John Lepper has reason to know that it is the product of the conspiracy between and among the Defendants.

THE ORDER OF VILLAGE JUSTICE RAFTER

96. On or about October 17, 2018, after a trial singularly deficient in the procedural due process which should have been afforded a pro se defendant in a quasi-criminal proceeding, Mr. Lepper was found in violation of § 365–26 of the Village of Babylon Code based upon a reference by Hon. John T. Rafter to the Merriam-Webster definition of a building without any

citation to the edition and year of publication of that dictionary or explanation of whether it had ever been adopted as an element of the Village of Babylon Code.

97. The Order by Village Judge Rafter finding John. Lepper in violation of § 365–26 of the Village of Babylon Code required Village Judge Rafter to use a definition of “building” from a dictionary since it was not defined in the Village of Babylon Code: “The Merriam-Webster Dictionary defines a building as follows; A structure that is designed or intended for support, enclosure, shelter or protection of persons, animals or property having a permanent roof that is support by columns or walls.” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 1)
98. Without referring to the remaining provisions of the Village of Babylon Code governing children’s play gyms and the expansive use of “any combination,” Judge Rafter states “The Court hereby specifically finds that the treehouse in question constituted a “building” within the meaning of the subject Code section.” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 3)
99. In that same October 17, 2018 Order finding Mr. Lepper in violation of § 365–26 of the Village of Babylon Code Village Judge Rafter states, “it is noted that the Notice of Violation is not signed by any representative of the Village of Babylon.” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2)

100. In his October 17, 2018 Order finding Mr. Lepper in violation of § 365-26 of the Village of Babylon Code Village Judge Rafter finds that “Defendant [Mr. Lepper] did apply for a permit” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2.) but then states without any reference to the record, “but his application was deemed incomplete as it did not contain a drawing from a licensed architect or engineer.” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2.)
101. The Village of Babylon never required “a drawing from a licensed architect or engineer” from any other “elevated playhouse” or treehouse that now exists in the Village.
102. There is no evidence that the Lepper family was ever informed by any representative of the Village of Babylon that such a “drawing” was required for a children’s tree house of less than 90 square feet floor area.
103. If, in fact, the Village of Babylon Code Section 365-26 does require such an expensive document to obtain a permit for a children’s tree house of less than 90 square feet of floor area it essentially prevents a homeowner from the legal and proper use of their real property and is on its face a violation of Plaintiffs’ civil, constitutional and human rights associated with title to real property and the quiet enjoyment of that property as a family.
104. Indeed, as per the application of Thomas C. Bruckner concerning 99 Park Avenue, Village of Babylon, County of Suffolk, State of New York, this requirement was pretextual.

POST-TRIAL ACTIONS AGAINST JOHN LEPPER

105. On October 17, 2018, after the Order of Village Judge Rafter was delivered by code enforcement, John Lepper went to Village Court to inquire about appeal.
106. The next day, October 18, 2018, Babylon Village Attorney Gerard Glass sent a letter to the Lepper Family, stating, in toto, that "As you know this office is counsel to the Village of Babylon. The Court has rendered its decision. Please let me know your intentions. Thank you for your attention and courtesies herein."
107. The day after Attorney Glass sent his letter, and two days after the Order was issued, Building Inspector Fellman stated in a letter that, "On October 17, 2018 Village Justice John Rafter found you guilty of each offense listed on various summonses you received regarding the construction of a treehouse within your front yard setback. I, as Building Inspector, am ordering the continuation of the stop work order barring any further construction or occupancy of the tree house."
108. Building Inspector Fellman concluded his October 19, 2018 letter with the threat that the Lepper Family "must remove the tree house in its entirety or summonses may be issued on a daily basis."
109. The threat of accruing daily fines, issued by Defendant Fellman and repeated in open court by Defendant Gerard Glass, persist to this very day.

**THE SECOND WAVE OF PROSECUTIONS AGAINST
JOHN LEPPER**

110. Rather than allow the Lepper family sufficient time to appeal or seek counsel to elapse, the Defendants, jointly and severally, individually and collectively, did work together to injure the Plaintiff Lepper family; silence the Lepper family from speaking out about community problems, and did engage in an abuse of legal process to have Mr. Lepper remove the Lepper Family Treehouse.
111. Defendant Building Inspector Fellman did issue multiple additional accusatory instruments concerning the Lepper Family Treehouse on October 31, 2018.
112. On November 5, 2018, John Lepper paid the fines imposed on him by Village Judge Rafter in his October 17th Order.
113. On November 13, 2018, the day of a hearing scheduled for trial on accusatory instruments previously issued by Building Inspector Fellman, Building Inspector Fellman created and filed a document designated "Accusatory Instrument/Information for State and Village Ordinances" asserting John Lepper "did wrongfully and unlawfully commit the offense of Section 365-26 Construction without a Permit," followed by a recital of "§365-26 Permit Required; Materials to be submitted."
114. Nowhere in that putative Accusatory Instrument/Information and the ordinance quoted therein is there any mention of the need for any drawing by an "architect or engineer."

115. Nowhere in the application of Thomas C. Bruckner 99 Park Avenue, Village of Babylon, County of Suffolk, State of New York is such a requirement nor is there a requirement on any of the treehouses/boathouses/playhouses which have been allowed to exist in the Village of Babylon without permits.
116. In that putative Accusatory Instrument/Information, Building Inspector Fellman alleges that he "did observe the defendant [John Lepper] erected a treehouse without a building permit. Further after a stop work order was issued on 10/19/18 barring any further construction or occupancy of the treehouse the defendant added lights."
117. On November 13, 2018, Village Justice John Rafter conducted a hearing on the accusatory instrument issued on October 20, 2018.
118. November 16, 2018, Plaintiff John Lepper filed a Notice of Appeal, a FOIL request, and a Litigation Hold Notice.
119. On November 20, 2018, a hearing was held before Village Justice Rafter concerning an alleged October 20th Violation and two additional from Halloween.
120. On November 20, 2018, through counsel, Mr. Lepper asked the Court to enjoin the daily issuance of fines so that Mr. Lepper may resolve the new set of accusatory instruments against him on the merits but the Hon. John T. Rafter refused to do so.

121. On November 21, 2018, John Lepper tried to obtain copies of exhibits that were missing from the trial on September 18, 2018. After waiting two hours he was denied copies.
122. On November 27, 2018, at approximately 1515 hours Plaintiff John Lepper filed a Motion to dismiss the outstanding accusatory instruments together with a letter from Attorney Morris requesting copies of the exhibits from the trial on September 18, 2018.
123. On November 27, 2018, at 8pm Mt. Lepper attended a Babylon Village Board of Trustees meeting with Joe Mineo and Nick Montalto.

COMMENCEMENT OF THE FIRST ACTION

124. On December 10, 2018, Plaintiff filed a Verified Complaint accompanied by an Order to Show Cause and the matter was heard before Hon. Joseph F. Bianco.
125. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon utilized daily fines against purported Village of Babylon Code violators to obtain compliance.
126. Defendant Gerald Glass, Esq. did represent in open Court on December 10, 2018 that the Village of Babylon intends to require building permits for any treehouse structure in the Village of Babylon.
127. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon took issue with

a temporary electric extension cord to a tree on Plaintiffs' private property and sought to enjoin the use of a light that illuminated Plaintiffs American Flag and the adjoining street where illegal drug activity had taken place.



128. According to statements made by Defendant Gerald Glass in open Court on December 10, 2018, the attempts of Defendant elected officials Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee, Mary Adams, Village Trustee, to enforce Village of Babylon Code Section 865-26 was a thinly disguised effort to extort money from the Plaintiff.
129. Defendant Gerald Glass, speaking on behalf of all Defendants, did wish to enjoin Plaintiff from efforts at

ameliorating the drug use that occurred on and around his property by illuminating the street.

130. Defendant Gerald Glass, on December 10, 2018 before this Honorable Court, did provide several admissions as to the true intentions of Defendants, jointly and severally, individually and collectively, to punish Plaintiffs for every day that the Lepper Family Treehouse existed.
131. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon was monitoring Plaintiffs' property.
132. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon was conducting surveillance of Plaintiffs' property and the family activities thereon.
133. Defendant Gerard Glass, Esq. did proceed to profit as being sued as a named Defendant along with the Village of Babylon as further discussed below.

PLAINTIFF'S APPEAL TO THE APPELLATE TERM

134. John Lepper did appeal the convictions of the lower court.
135. *People v Lepper (John)* 2019 NY Slip Op 52117(U) was decided on December 19, 2019 by the Appellate Term, Second Department (hereinafter "Appellate Term Decision") which held that "The accusatory instruments...fail to allege facts of an evidentiary nature establishing the nature of the work that defendant performed on the tree house, namely, that

defendant had erected the tree house, structurally altered it or changed the use thereof...[and]... Therefore, the accusatory instruments fail to allege every element of the offense." *Id.*

136. According to a *Newsday* Article, Keldy Ortiz, Homeowner who built treehouse serves claim against Village of Babylon, *Newsday* (April 30, 2020), <https://nwsdy.li/3oO9VZu>; Defendant Gerard Glass "said the December decision[, Appellate Term Decision], was based on a technicality."
137. Defendant Gerard Glass stated to *Newsday*, "Babylon Village attorney Gerard Glass says the decision is no surprise because village officials knew there was an issue in the way the summons was written, and they could not correct it after the fact." See Deborah S. Morris, "Permit not needed for Babylon treehouse, court rules," *Newsday* (January 2, 2020), <https://nwsdy.li/3oOa9zO>.
138. Defendant Gerard Glass admits that Defendants knew of this issue yet proceeded, not only in the prosecution but in demanding daily fines and removal/alteration of the Lepper treehouse.
139. Defendants further retaliated against John Lepper as discussed below, harming his person, reputation and job.
140. Referring to the Appellate Term decision, Defendant Gerard Glass is quoted as stating that "This has no impact on the case whatsoever," Glass said. "This has nothing to do with the substantive issues of the cause of why he didn't get a building permit." *Id.*

GENERAL COMPLAINTS BY THE PLAINTIFF

141. As evidenced by, among other things, the significant number of unpermitted structures in the nature of treehouses, boathouses, play houses within the Village of Babylon, Code, Defendants lacked probable cause for actively prosecuting John Lepper.
142. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments against Mr. Lepper in retaliation for his speaking out about matters of public concern in and around the Village of Babylon.
143. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments against Mr. Lepper to further the wishes of some unidentified complainant and in derogation of the constitutional rights of the Lepper Family.
144. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments to Mr. Lepper carrying criminal sanctions without allowing Mr. Lepper the opportunity to comply with or otherwise challenge the actions of the Village of Babylon.
145. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments to obtain monies and property for which Defendants were not entitled.

146. Defendants, jointly and severally, individually and collectively, knew and had reason to know that their actions were unjustified and without probable cause.
147. Defendants, jointly and severally, individually and collectively, knew and had reason to know that their actions would cause harm to and inflict distress upon the Plaintiff.
148. The Defendants, jointly and severally, individually and collectively, and the inability to obtain a fair trial continue to oppress the Lepper family and cast a cloud of criminality over their persons, home, and family.
149. Among the examples of the organized oppression of the Lepper family by the Defendants, jointly and severally, individually and collectively, has been the wrongful delay and outright refusal to provide Mr. Lepper with the exhibits from his trial before Village Judge Rafter.

THE BASIS FOR EQUITABLE RELIEF

150. Defendant Village of Babylon through the threats of Building Inspector Fellman continues to insist that the Lepper family tear down and completely remove their children's treehouse under threat of daily fines of up to \$1,000 each day.
151. John Lepper is in imminent danger of serious, permanent, and irreparable economic damage.
152. The Lepper family continues to live in fear that they will suffer serious economic punishment for a reasonable use of their own private property and their temerity in exercising their First Amendment rights by speaking out against the

unconscionable actions of the Defendants in depriving the Lepper family of their liberty interest in raising their children as they see necessary which included trying to protect their infant children from exposure to hypodermic needles on the ground by building them a safe harbor in the air; and then retaliating against the Lepper family for speaking out.

153. John Lepper has no adequate remedy at law.
154. Defendant Village of Babylon has not established any association between Village of Babylon Code § 365-26 and the public health, safety and welfare of the residents of the Village of Babylon.
155. There is no substantial credible evidence that the Lepper family children's treehouse represents a threat, much less a danger, to the health, safety, and welfare of the residents of the Village of Babylon.
156. Staying enforcement of the ordinance, specifically the daily fines, pending the resolution of this action and a declaration of the constitutionality and enforceability of Village of Babylon Code § 365-26 will not cause any harm and/or damage to the residents of the Village of Babylon.

**DEFENDANTS USE LEGAL PROCESS, FINES AND
PROSECUTION TO SILENCE JOHN LEPPER AND
VIOLATE HIS FIRST AMENDMENT RIGHTS**

157. Defendants have constrained the ability of John Lepper to create a treehouse/playhouse/elevated playhouse for his infant children shortly after he spoke out against the criminal activity occurring within Village of Babylon.

158. Defendants have retaliated against John Lepper for exercising his rights under the First Amendment.
159. Attorney Eric Tosca, representing the same Defendants in Lepper v. Village of Babylon, 18-cv-7011 tried to make an emergency application to enjoin the press from attending and John Lepper from contacting the press when it had its purported inspection of the Subject Premises.
160. Defendants knew and had reason to know that John Lepper intended on building a treehouse to remove his children from and allow their children to play without the danger of contact with hypodermic needles on the ground which had been discarded from the street and public walkways onto the Lepper property.
161. Defendants knew and had reason to know that John Lepper spoke publicly and spoke out against the hypodermic needles found on his property, crime in his community and the safety and wellbeing of his children.
162. In response to his identifying the problem of the hypodermic needles and their indication of a community drug problem and bringing the issues before the administration of the Village of Babylon, Defendants, individually and collectively, did conspire and act to deprive Mr. Lepper of his rights under the First, Fourth, Fifth, and Fourteen Amendment by ordering immediate and total removal of the treehouse he built for his children under the threat of continuing Draconian confiscatory fines and penalties.

163. Defendants, individually and collectively, did act to deprive Mr. Lepper of his rights under the First, Fourth, Fifth, Eighth, and Fourteen Amendment while knowing and having reason to know that Mr. Lepper fully complied with the permit process of the Village of Babylon Code, and by obfuscating an already arcane and obscure administrative process cause injury to the Lepper family.
164. Rather than remedy the problem of drug abuse in the community or address the concerns Mr. Lepper expressed about the dangers of the discarded hypodermic needles which could have been addressed by, among others, the Village of Babylon Code Enforcement, Defendants accepted the building permit which Mr. Lepper filed and the fee which he tendered without any intention of processing the application or even acknowledging its existence in their later prosecution of John Lepper in the Babylon Village Court.
165. Upon information and belief, Defendants at the behest of an unnamed and unidentified complainant did conspire and plan to issue accusatory instruments to Mr. Lepper with the ultimate goal of obtaining money, removing all remnants of a then unfinished treehouse, and punishing the Lepper family for exercising their constitutional rights.
166. On May 10, 2018, Defendants acknowledged that the treehouse did not violate any provision of the Village of Babylon Code by accepting the building permit application and required fee.

167. Defendants concede that notice of all three violations which were each dated in May, 2018, were actually sent to Mr. Lepper in July, 2018.
168. Defendants delayed processing the Lepper family building permit for their children's treehouse and by failing to acknowledge and/or act upon the application, created a situation where fines would accrue against the Lepper family for lack of a permit and cause the Lepper family serious, permanent, and irreparable economic damage.
169. Defendants caused quasi criminal process to issue legal process against the Lepper family to silence the Plaintiff John Lepper and violate the civil and constitutional rights of the Lepper family.

**VILLAGE OF BABYLON CODE § 365-26 FORECLOSES
AGE-APPROPRIATE PRIVATE RIGHTS OF
ASSEMBLY AND ASSOCIATION ON ARBITRARY
GROUNDS AND ARE THEREFORE TECHNICALLY
CAPRICIOUS AS WELL AND CERTAINLY
UNDERINCLUSIVE.**

170. Plaintiff John Lepper has a constitutionally protected liberty interest in his property.
171. Plaintiff John Lepper has the right to establish a home and bring up children.
172. Plaintiff John Lepper has the right to direct the upbringing and education of his infant children.

173. Plaintiff John Lepper has the right and duty to nurture his children and maintain the physical homestead environment in which they will grow and mature.
174. A special respect for individual liberty in the home has long been part of our culture and our law.
175. That Defendants issued legal process to silence the Plaintiffs and to remove the Lepper Family Treehouse without probable cause that the children's treehouse would have a negative impact on the public health and safety of the residents of the Village of Babylon and thereby violated the constitutional rights and liberty interests of the Plaintiff without due process of law.
176. Defendants took action within the span of forty-eight hours to find Mr. John Lepper guilty of a crime and then threaten daily fines if the treehouse was not removed, however, they still have not acted upon the permit application filed by the Lepper family.
177. The conviction of an unrepresented pro se John Lepper and the unjustified fines imposed by Village Judge Rafter were an unconstitutional attempt to silence Plaintiff John Lepper and intimidate him from speaking out against government ineptitude, the scourge of drugs, and his intention to do something about it on his own property.
178. Defendants actions in the prosecution of John Lepper violated his civil and constitutional rights of the Plaintiff Lepper family, their liberty rights, and their rights to due process, enjoyment of property, freedom of assembly, and the ability to

associate with one another on their property without the fear of government intrusion or reprisal.

179. Defendants violated the civil and constitutional rights of the Plaintiff Lepper family by the unsupported citation of the Lepper Family Treehouse as an unsafe structure in violation of the International Building Code without any legal, much less, equitable basis therefore.
180. Building Inspector Fellman never presented any substantial credible evidence identifying the nature and manner he claimed the treehouse was an unsafe treehouse and claimed, in sworn testimony, that the treehouse was safe.

**PLAINTIFF JOHN LEPPER'S RIGHTS ARE BEING
VIOLATED BY THE THREAT OF CONTINUED FINES**

181. Village of Babylon Code § 365-26 is criminal in nature.
182. The fines associated with Village of Babylon Code § 365-26 are punitive, doubling and tripling and culminating in the demand for the removal of property without due process.
183. The actions of Defendants in enforcing Village of Babylon Code § 365-26 against the Lepper family and threatening to continue enforcement with successive process and escalating fines and penalties for the very same conduct violate the Constitutional Rights of the Lepper family by subjecting them to repeated double jeopardy.
184. John Lepper raised this issue before the Honorable John T. Rafter who ignored the issues, then convicted Mr. Lepper, an

unrepresented, pro se defendant without any substantial credible evidence of guilt.

185. The accrual of multiple accusatory instruments, existing unfounded convictions of three violations and pending prosecution of further accusatory instruments establishes the imminent danger of serious, permanent, and irreparable economic damage and the likelihood that such danger will be continued based upon the sworn testimony of Defendant Building Inspector Fellman, Plaintiff John Lepper and the Lepper family has been placed in jeopardy, repeatedly, for the same alleged criminal offense.
186. Defendants, jointly and severally, individually and collectively, had a duty not to subject Plaintiff John Lepper and the Lepper family to constitutional violations, summary punishment, improper and inappropriate charges of Babylon Village Code violations, malicious prosecution, abuse of process, false and improper investigation.
187. Defendants, jointly and severally, individually and collectively, through their conduct, acts, and omissions acted outrageously and beyond the bounds of decency in attempting to coerce Plaintiff into removing a lawful children's treehouse from their property by threatening ongoing and continued legal proceedings with the potential for confiscatory fines and imprisonment and filing unjustified and unsupportable criminal charges against and imposing summary punishment and excessive fines upon Plaintiff for allegedly violating an unconstitutional ordinance, Village of Babylon Code §365-26;

together with concealing and attempting to cover up the wrongs done to Plaintiffs; and defaming, slandering and failing to redress the grievances done to the Plaintiff.

188. Defendants, jointly and severally, individually and collectively, violated the Plaintiff's rights secured under the United States Constitution and the New York State Constitution.

**PROSECUTION OF JOHN LEPPER BY THE
DEFENDANTS IS AN UNCONSTITUTIONAL TAKING
OF HIS PROPERTY**

189. Village of Babylon Code § 365-26 is unconstitutional:
190. Village of Babylon Code § 365-26 as enforced by the Defendants against the Plaintiff Lepper family is unconstitutionally vague, overbroad, and violates the civil and constitutional rights of the Lepper family guaranteed to them under the First, Fourth, Fifth, Eighth and Fourteen Amendment of the Constitution.
191. Village of Babylon Code § 365-26 fails to give Plaintiff John Lepper fair notice that building a treehouse of less than 90 square feet is forbidden by the Code.
192. Village of Babylon Code § 365-26 does not provide guidance to ordinary homeowners as to whether building a treehouse for their infant children might be construed as a violation subjecting them to criminal prosecution.
193. Village of Babylon Code § 365-26 encourages arbitrary and erratic arrests and convictions.

194. The accusatory instruments charging Plaintiff John Lepper with violating Village of Babylon Code § 365-26 for building a treehouse for his infant children upon the malice and/or animosity of a neighbor.
195. Village of Babylon Code § 365-26 fails to meet the fundamental principle of statutory construction for laws with criminal penalties, minimal guidelines to govern law enforcement.
196. As evidenced by the Kafkaesque prosecution and continued litigation over a treehouse for the infant Lepper children on their own property, Village of Babylon Code § 365-26 allows law enforcement and local government to pursue their personal animosity in violation of the civil and constitutional rights of the Plaintiff.
197. Village of Babylon Code § 365-26 has been utilized to obtain monies from Mr. Lepper under threat of continuing fines, liens on the Lepper family home, and/or incarceration.

**THE EXCESSIVE FINES THREATED BY THE VILLAGE
OF BABYLON VIOLATE THE EIGHTH AMENDMENT**

198. Because of the criminal nature of Village of Babylon Code Section 365-26, Plaintiff John Lepper can suffer fines up to one-thousand dollars per day during the existence of his children's treehouse.
199. The Eighth Amendment of the United States Constitution protects against unreasonable and excessive fines.

200. Defendants, and specifically as stated in open Court by Gerald Glass, Esq. on December 10, 2018, intend on utilizing daily fines to enforce Village of Babylon Code § 365-26.
201. Village of Babylon Code § 365-26 can result in fines amounting to thousand(s) of dollars even though no further action was taken by the Plaintiff thereby establishing that the fines are associated with the mere existence of the children's treehouse, not its use.
202. Defendants, jointly and severally, individually and collectively, know and have reason to know that such daily fines are excessive and extortionate in nature.
203. Defendants, as stated in open Court by Gerald Glass, Esq. on December 10, 2018, discussed utilizing daily fines as part of their package of tools to enforce Village of Babylon Code § 365-26.
204. Defendants as stated in open Court by Gerald Glass, Esq. on December 10, 2018, opined that the existence of the Lepper Family Treehouse was deserving of daily fines by Defendants utilizing Village of Babylon Code § 365-26.
205. Plaintiff needs to take no further action for Defendants to issue additional fines.
206. Plaintiff needs to take no further action for Defendants to issue daily fines.
207. According to Defendants, and specifically as stated in open Court by Gerald Glass, Esq. on December 10, 2018,

Defendants could simply observe and fine Plaintiff everyday he sought to defend himself in court.

208. Defendants, collectively through their attorney and agent as Village Attorney, Gerard Glass did state in open Court on December 10, 2018 that the Village of Babylon did use exorbitant fines to obtain property, or revenue or coerce action to which Defendants are not otherwise entitled.
209. Accordingly, Plaintiffs are damaged and seek enjoinder of the enforcement of Village of Babylon Code Section 365-26.

PLAINTIFF'S "MONELL" CLAIM; 42 U.S.C. §1983

210. Defendant elected officials, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control their employees, particularly Building Inspector Fellman, and the Defendant Village of Babylon prosecutor, Gerard Glass, in the administration of the Village of Babylon Code Section 365-26 for which John Lepper has suffered injury and damage.
211. Defendant elected officials, jointly and severally, individually and collectively, were responsible for the administration and operation of the Village of Babylon.
212. Defendant elected officials, jointly and severally, individually and collectively, were responsible for policy and decision making in the Village of Babylon.
213. Defendant elected officials, jointly and severally, individually and collectively, actively established or permitted to exist a Village wide policy of denial of due process and equal

protection in the administration and enforcement of the Village of Babylon Code, in this specific case Section 365-26.

214. Defendants, jointly and severally, individually and collectively, subjected Plaintiff, John Lepper, to selective enforcement of Village of Babylon Code Section 365-26 and disparate treatment from that afforded similarly situated property owners.
215. Defendant elected officials, jointly and severally, individually and collectively, failed to remediate the actions taken against the Lepper family for erecting their children's treehouse and continue to harass, threaten, and attempt to coerce the Lepper family into removing their children's treehouse.
216. Defendant elected officials, jointly and severally, individually and collectively, failed to remediate the actions taken against John Lepper for speaking out against criminal activity, against the retaliation experienced, exercising his right to dissent, appeal from the court, seek redress in a court of law and being politically active within the Village of Babylon.
217. Defendant elected officials, jointly and severally, individually and collectively, have continued to subject John Lepper to continued prosecution for alleged violations of Village of Babylon Code Section 365-26 as part of a cover up for the unjustified and improper earlier prosecution and conviction of Plaintiff John Lepper for violating Village of Babylon Code Section 365-26 by erecting a treehouse of less than 90 square feet "lot area" for his infant children.

218. Defendant elected officials, jointly and severally, individually and collectively, knew, or should have known, that there was no system or procedure in place for reporting, investigating, or remediating incidents involving constitutional violations and harassment of Village of Babylon residents by means of the Village of Babylon Code other than this litigation.
219. Defendant elected officials, jointly and severally, individually and collectively, maintained a deliberate indifference to the human, civil, and constitutional rights of the John Lepper.

PLAINTIFF SEEKS INJUNCTIVE RELIEF

220. Mr. Lepper seeks to enjoin the daily fines, threatened removal of property and continued enforcement of Village of Babylon Code § 365-26 as against him as unconstitutional.
221. The elected officials, particularly the Village Judge, and all the employees, agents of, and consultants to the Incorporated Village of Babylon have a clear and unequivocal duty to all the resident property owners of the Village to assure them peaceful and quiet enjoyment of their homes and property according to the ancient and long standing maxim of at the heart of common law equity jurisprudence, *sic utere tuo ut alienum non laedas*, enjoining everyone to use their own property in such a way as not to injure that of another.
222. Defendant Village of Babylon seeks to limit the use of the Plaintiff's real property while it imposes no restriction on others property within the Village of Babylon and, *inter alia*, accept hand-written drawings from other residents.

- 223. Defendant Village of Babylon claims it has a right to restrict the erection of structures on private property that are less than 90 square feet.
- 224. Village of Babylon Code §326-26 can only be enforceable if it is a proper exercise of the police powers of the State by the Village of Babylon.
- 225. Village of Babylon Code §326-26 should be considered a zoning regulation by Defendants Village of Babylon.
- 226. To impose fines and even imprisonment for erecting a "building... on any lot, plot or premises" in the Village of Babylon "until a permit authorizing the same shall have been issued by the Building Inspector" (Village of Babylon Code §326-26.) without defining "building" and the phrase, "lot, plot or premises" creates a vague, ambiguous, and essentially meaningless ordinance.
- 227. Each of the accusatory instruments lodged against Defendant Lepper is based on the claim that erecting a treehouse of less than 90 square feet without a building permit or variance from the Zoning Board of Appeals is a violation of the Village of Babylon Code.

STATE LAW CLAIMS

- 228. Defendants, jointly and severally, individually and collectively, had a duty not to subject Plaintiff John Lepper and the Lepper family to constitutional violations, summary punishment, improper and inappropriate charges of Babylon

Village Code violations malicious prosecution, abuse of process, false and improper investigation.

229. Defendants, jointly and severally, individually and collectively, through their conduct, acts, and omissions acted outrageously and beyond the bounds of decency in (a) attempting to coerce Plaintiffs into removing a lawful children's treehouse from their property by threatening ongoing and continued legal proceedings with the potential for confiscatory fines and imprisonment; (b) filing unjustified and unsupportable criminal charges against and imposing summary punishment and excessive fines upon Plaintiffs for allegedly violating an unconstitutional ordinance, Village of Babylon Code Section 365-26; (c) concealing and attempting to cover up the wrongs done to Plaintiffs; and defaming, slandering and failing to redress the grievances done to the Plaintiff.
230. Defendants, jointly and severally, individually and collectively, violated the Plaintiff's rights secured under the United States Constitution and the New York State Constitution.

MALICIOUS PROSECUTION

231. The actions of the Defendants, jointly and severally, individually and collectively, in prosecuting John Lepper for building an elevated playhouse for his children are a perversion of proper legal procedures in violation of his

personal liberty and privacy interests under the Fourth Amendment.

232. Defendants actions, as discussed above, were undertaken to punish John Lepper for exercising his first amendment rights.
233. Defendants, collectively, did act to punish John Lepper, defame John Lepper, harass and intimidate John Lepper by legal process, threat of arrest, defamation and prosecution.
234. Defendants, collectively, did encourage Defendant Gerard Glass to incur large legal fees, in excess of \$50,000 USD, to prosecute John Lepper and defend the constitutional violations against John Lepper to which Defendant Gerard Glass, an attorney, did oblige.
235. The actions of the Defendants, jointly and severally, individually and collectively, in prosecuting John Lepper for building an elevated playhouse for his children were initiated or continued against him, with malice and without probable cause, and were terminated in his favor by the Appellate Term of the Supreme Court.

EXTRA-JUDICIAL ACTIONS AGAINST JOHN LEPPER

236. Defendants, individually and collectively, did contact the Suffolk County Police Department and make false allegations seeking to have John Lepper falsely arrested.
237. Defendant the late mayor Ralph Sciordino did contact the Suffolk County Police Department that visited with John Lepper and did inform John Lepper that he was the subject of a criminal complaint by, among others, Mayor Scordino.

238. In April 2019, upon information and belief, Defendants conspired to send a letter to Commissioner Nigro of the FDNY further efforts to slander, defame and harm John Lepper, who is a New York City firefighter, by complaining to the FDNY that firefighter Lepper broke FDNY rules by wearing his Class-A uniform in a courtroom to gain special favoritism from the Babylon Village Justice Court and further that he committed a criminal act against the late Mayor Ralph Sciordino.
239. As a result of the conspiracy perpetrated by and contributed to by the Defendants, jointly and severally, individually and collectively, John Lepper was forced to obtain representation from Eric Bischoff and defense by TJ McManus, Esq. of Sullivan Block and McGarry.
240. At the time the Defendants, jointly and severally, individually and collectively, conspired to facilitate the complaint to the FDNY they knew that John Lepper had sought a continuance of the hearing scheduled for August 14, 2018 from the afternoon session of the Court to the evening session in order for him to attend a memorial service for a brother firefighter who had died of illnesses from service at the 9/11 scene.
241. At the instance of Village Prosecutor Gerard Glass, Village Justice John T. Rafter denied the request and Firefighter Lepper was forced to leave the Memorial service before it was completed, in order to arrive in Court at precisely 1400 hours, but still in his Class A uniform.

242. On February 4th 2020, Detective Brian Greenze and another Suffolk County detective from Suffolk County Police Headquarters in Yaphank arrived at the home of John Lepper's mother asking to speak to him.
243. Det. Green told John Lepper that Village of Babylon Mayor Ralph Scardino and Town of Babylon Councilman Terry McSweeney had complained that they "felt threatened" by John Lepper and that he was "following" them.
244. Defendants, individually and collectively, did make these false accusations to injure John Lepper, subject John Lepper to seizure and/or arrest and attempted to have the Suffolk County Police Department prosecute John Lepper.
245. Defendants actions were the actual and proximate cause of harm, embarrassment, accruing legal fees and other damages.

THE ROLE OF THE VILLAGE ATTORNEY

246. In response to a *Newsday* Article stating that taxpayers are "paying more than \$50,000 in legal costs associated with a backyard treehouse they didn't help construct and can't enjoy for themselves." Keldy Ortiz, "Dispute over little backyard treehouse costs Babylon Village residents big bucks," *Newsday* (September 27, 2020), <https://nwsdy.li/3IKnoQ0>. Defendant Gerard "Glass defended the cost — \$54,749 — to help the village tackle the lawsuits Lepper has filed." *Id.*
247. According to *Newsday*, Village of Babylon Records show the following monies were paid to Gerard Glass relating to a

child's treehouse: Dec. 1 to Dec. 31, 2018: \$7,450; Jan. 9 to June 27, 2019: \$21,824; June 28 to Sept. 30, 2019: \$9,425; Oct. 1 to Jan. 18, 2020: \$16,050.

248. Actual malice by the Defendants against Plaintiff John Lapper is evidenced by paying Village Attorney Gerard Glass well over \$50,000.00 USD, in addition to the \$75,000.00 USD he makes as a part-time prosecutor for the Village of Babylon.
249. The American Bar Association recommends that "Prosecutors whose professional obligations are devoted full-time and exclusively to the prosecution function are preferable to part-time prosecutors who have other potentially conflicting professional responsibilities." American Bar Association, *Criminal Justice Standards for the Prosecution Function*, Fourth Edition (2017), Rule 8-2.1(a)(iii); available at <https://bit.ly/3oJPCwb>.
250. Indeed, "The prosecutor should not permit the prosecutor's professional judgment or obligations to be affected by the prosecutor's personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case." *Id.* at Rule 8-1.7(f).
251. Gerard Glass utilized his part-time position to prosecute a child's treehouse with instruments he later admitted were legally insufficient.

252. Gerard Glass profited at the costs of taxpayers "For 72 hours and 25 minutes between Jan. 9, 2019, and June 27, 2019, the village received a bill from Glass of \$21,725. During that time, the village received bills for various instances related to the cases with Lepper, including phone calls with village officials, a *Newsday* reporter and attending a deposition of Lepper, according to invoices." Keldy Ortiz, "Dispute over little backyard treehouse costs Babylon Village residents big bucks," *Newsday* (September 27, 2020), <https://nwsdy.1131kno60>

ABUSE OF PROCESS

253. Defendant Village of Babylon employed regularly issued legal process to compel Plaintiff to remove a children's treehouse.

254. Defendants, jointly and severally, individually and collectively, intended to inflict to do harm and cause damage to the Lepper family without excuse of justification.

255. Defendants, jointly and severally, individually and collectively, in order to obtain a collateral objective that is outside the legitimate ends of the process did cause a series of unfounded accusatory instruments to be issued against Plaintiff John Lepper.

NEGLIGENCE

256. Defendants, jointly and severally, individually and collectively, had a duty to act reasonably and responsibly and not to act in a manner that would cause injury and/or harm or the threat of harm to the Plaintiff Lepper family.

- 257. Defendant Village of Babylon was negligent, careless, and reckless in the treatment of Plaintiffs by failing to train, supervise, discipline and investigate its employees involved in the instant matter.
- 258. Defendant Village of Babylon knew or should have known of its employees' propensities for the conduct which caused substantial and severe injury to the Plaintiff.
- 259. Defendants acted negligently in violating the civil, Constitutional, and human rights of the Plaintiff.

**NEGLIGENT AND/OR INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

- 260. Defendants, individually and/or collectively, jointly and/or severally, acted outrageously and beyond the bounds of decency in violating the civil rights and liberty interests of the Plaintiffs causing them to suffer pain, shame, humiliation and anguish.
- 261. The reprehensible, extreme and outrageous conduct of the Defendants, jointly and severally, individually and collectively, against Plaintiffs occurred with intent and full knowledge that their conduct would cause severe and extreme emotional and psychological harm to Plaintiff.
- 262. Defendants did fail to investigate improper use of criminal process but, rather, Defendants began to conspire and cover up such actions by prosecuting criminal charges and threatening Plaintiff with unjust and excessive fines and threatened loss of their property.

263. The Defendants knew or had reason to know that Plaintiff John Lepper were guilty of no wrongdoing.
264. Defendants, jointly and severally, individually and collectively, acted with knowledge and reason to know that their conduct would cause severe and extreme emotional and physical harm to Plaintiff.

DEFAMATION

265. The Plaintiff John Lepper family is being harassed by the Village of Babylon and the individual defendants, to the extent that the Lepper family use of their property is being monitored and the curtilage of their property invaded without due process on what appears to be a daily basis for the purpose of attempting to fabricate charges of Babylon Village Code violations for further prosecution.
266. Whereas, as a result of said defamation, Plaintiff John Lepper continue to suffer from humiliation, loss of standing in the community, loss of self-esteem and public esteem, public disgrace and severe/extreme emotional distress.

PRIMA FACIE TORT

267. Defendants, individually and/or collectively, jointly and/or severally, acted outrageously and beyond the bounds of decency in violating the civil rights and liberty interests of the Plaintiff causing him to suffer pain, shame, humiliation and anguish.

268. The reprehensible, extreme and outrageous conduct of the Defendants, jointly and severally, individually and collectively, against Plaintiff occurred with intent and full knowledge that their conduct would cause severe and extreme emotional and psychological harm to Plaintiffs.

INJURIES AND DAMAGES

269. As a direct and proximate result of the wrongful actions and inappropriate lack of action by the Defendants, jointly and severally, individually and collectively, Plaintiff John Lepper has suffered injury and damages, emotional and psychological harm, emotional injury, distress and pain, and incurred significant cost and expenses, including but not limited to legal fees, loss of good name and standing in the community, public stigma, personal humiliation, social degradation, and other cost and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek a judgment of this Honorable Court:

DECLARING that Defendants jointly and severally, individually and collectively, maliciously prosecuted Plaintiff John Lepper for allegedly violating Village of Babylon Code § 365-26.

DECLARING that the prosecution of John Lepper for allegedly violating Village of Babylon Code § 365-26 was malicious

DECLARING that the prosecution of John Lepper for violating Village of Babylon Code Section 365-26 as detailed above was malicious and a prosecution for which the Defendant Village of Babylon Prosecutor maintained a financial interest for pursuing;

DECLARING that multiple fines, duplicative and daily fines, sought to be imposed under Village of Babylon Code § 365-26 as unconstitutional and violate the Plaintiff's rights under the Fourteenth, Fifth and Eighth Amendments to the United States and New York State Constitutions;

DECLARING that multiple fines, duplicative and daily fines, sought to be imposed under Village of Babylon Code § 365-26 unconstitutional and unenforceable as unconstitutionally excessive;

PROHIBITING the Village of Babylon from issuing further accusatory instruments against Plaintiff charging violations of Village of Babylon Code § 365-26 for the existence of the Lepper family treehouse;

PROHIBITING the Village of Babylon from issuing accusatory instruments against other treehouses or children's play structures less than 90 square feet in floor area located within the Village of Babylon;

APPOINTING a federal monitor to observe, monitor, retrain and direct the Defendants to refrain from violation of civil rights and first amendment violations;

DIRECTING restitution to the Plaintiff and all the other residents of the Incorporated Village of Babylon of all the monies expended by or on behalf of the Village in prosecuting the Plaintiff for allegedly violating Village of Babylon Code § 365-26 by erecting a treehouse to be used as a playhouse for his infant children;

AWARDING Plaintiff compensatory, general, and punitive damages, costs, disbursements, and attorneys' fees from the Defendants.

All together with such other and further relief as to this Court shall deem just and proper.

Respectfully submitted,

DATED AT Melville, New York
December 21, 2020



CORY H. MORRIS (CM 5225)

THE LAW OFFICES OF CORY H. MORRIS

Attorney for the Plaintiff

135 Pinelawn Road, Suite 250s

Melville NY 11747

Phone: (631) 450-2515

FAX: (631) 223-7377

Email: Cory.H.Morris@protonmail.com

VICTOR JOHN YANNAcone, JR., (VY6405)

of counsel

Phone: (631) 475-0231

Email barrister@yannalaw.com

To: ERIC TOSCA, Esq.
KELLY RODE AND KELLY
Attorneys for the Defendants
330 Old Country Road
Mineola, NY 11580

GERARD GLASS, Esq.
Babylon Village Attorney
153 West Main Street
Babylon, New York 11702

Case 2:21-cv-00014-BMC Document 1 Filed 01/04/21 Page 66 of 67 PageID #: 66

To: ERIC TOSCA, Esq.
KELLY RODE AND KELLY
Attorneys for the Defendants
330 Old Country Road
Mineola, NY 11580

GERARD GLASS, Esq.
Babylon Village Attorney
153 West Main Street
Babylon, New York 11702

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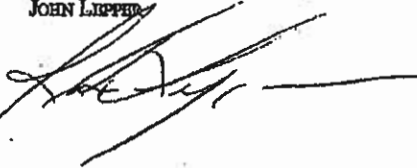
VERIFICATION

State of New York }
 ss.

County of Suffolk

JOHN LEPPER being duly sworn, deposes and says that he is the Plaintiff in the within action and the father and natural guardian of the infant Plaintiffs and that he has read the foregoing complaint and that the allegations of fact contained therein are true except as to those portions therein stated to be alleged upon information and belief, and as to those allegations he believes them to be true.

JOHN LEPPER



Sworn on this 31st
day of December 2020

Joan D. Reardon 12/31/2020

JOAN D. REARDON
NOTARY PUBLIC, State of New York
No. 01RE8328703
Qualified in Suffolk County
Commission Expires August 31, 2023

EXHIBIT “F”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER,

Plaintiff,

-against-

Index No. 2:18-cv-07011 JMA-AYS

Previously filed under
Index No. 2:21-cv-00014

JURY TRIAL DEMANDED

VILLAGE OF BABYLON; THE ESTATE OF RALPH SCORDINO, Former Village of Babylon Mayor, Village of Babylon Mayor, KEVIN MULDOWNNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon,

Defendants.
-----X

**DEFENDANTS' ANSWER
TO PLAINTIFF'S VERIFIED COMPLAINT**

Defendants, VILLAGE OF BABYLON; KEVIN MULDOWNNEY, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, MARY ADAMS, Mayor of the Village of Babylon; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, hereby answer the Verified Complaint of the plaintiff, JOHN LEPPER, filed in the above-captioned matter on December 21, 2020, and assert affirmative defenses as follows:

**ANSWERING EACH AND EVERY CAUSE
OF ACTION OF THE COMPLAINT**

FIRST:

Denies allegations contained in paragraphs numbered "1," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "13," "14," "15," "16," "17," "18," "19," "21," "24," "27," "29," "30," "31," "32," "38," "39," "40," "42," "43," "44," "45," "46," "47," "48," "49," "51," "52," "53," "54," "55," "56," "57," "58," "59," "60," "61," "62," "63," "66," "67," "68," "69," "71," "73," "74," "75," "76," "77," "79," "80," "83," "84," "86," "88," "89," "90," "91," "93," "94," "95," "96," "97," "99," "101," "102," "103," "104," "109," "110," "111," "112," "113," "114," "115," "125," "126," "128," "129," "130," "131," "132," "133," "136," "137," "138," "139," "140," "141," "142," "143," "144," "145," "146," "147," "148," "149," "150," "151," "152," "153," "154," "155," "156," "157," "158," "159," "160," "161," "162," "163," "164," "165," "166," "167," "168," "169," "175," "176," "177," "178," "179," "180," "182," "183," "184," "185," "186," "187," "188," "189," "190," "191," "192," "193," "194," "195," "196," "197," "199," "200," "201," "202," "203," "204," "207," "208," "209," "210," "213," "214," "215," "216," "217," "218," "219," "220," "222," "226," "227," "228," "229," "230," "231," "232," "233," "234," "235," "236," "237," "238," "239," "240," "241," "244," "245," "248," "251," "252," "253," "254," "255," "256," "257," "258," "259," "260," "261," "262," "263," "264," "265," "266," "267," "268" and "269" of the Verified Complaint.

SECOND:

Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "20," "22," "23," "33," "34," "64," "65," "72," "78," "82," "85," "87," "98," "105," "106," "107," "117," "118," "120," "121," "122," "123," "134," "242," "243" and "247" of the Verified Complaint.

THIRD: Denies allegations contained in paragraphs numbered "26," "28," "37," "100," "135," "170," "181," "198," "211," "212," "223," "224," "225" and "249" of the Verified Complaint and refers all questions of law to the Court.

FOURTH: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "36," "119," "171," "172" and "173" of the Verified Complaint and refers all questions of law to the Court.

FIFTH: Denies allegations contained in paragraph numbered "41" of the Verified Complaint and no Exhibit 1 is attached.

SIXTH: Denies allegations contained in paragraphs numbered "50," "174," "205," "206" and "221" of the Verified Complaint as the allegations are too vague to constitute a fair statement to respond to.

SEVENTH: Denies allegations contained in paragraphs numbered "70," "81," "92," "108," "127" and "246" of the Verified Complaint as the alleged statements are without context to form a fair statement to respond to.

EIGHTH: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "116" of the Verified Complaint as the alleged statements are without context to form a fair statement to respond to.

NINTH: Denies allegations contained in paragraph numbered "250" of the Verified Complaint as the alleged statement is without context to form a fair statement to respond to, and refers all questions of law to the Court.

DEMAND FOR JURY TRIAL

TENTH: Defendants demand a trial by jury for the non-equitable relief.

FOR A FIRST, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

ELEVENTH: That any injuries or damages sustained by the plaintiff was occasioned through the negligence and culpable conduct on the part of the plaintiff.

FOR A SECOND, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWELFTH: That this Court lacks jurisdiction over the person or property of the named defendants either individually or collectively, VILLAGE OF BABYLON; THE ESTATE OF RALPH SCORDINO, KEVIN MULDOWNNEY, ROBYN SILVESTRI, TONY DAVIDA, MARY ADAMS, STEPHEN FELLMAN, SUZANNE SCHETTINO, GERARD GLASS, Esq., and DEBORAH LONGO, in that no proper service of process under Federal law or State law was made on the defendants.

FOR A THIRD, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

THIRTEENTH: That the party making claim lacks capacity to bring the action. Plaintiff has no standing to sue for alleged *Monell* claims. The plaintiff has no standing to interfere with the election of any of the parties to hire counsel and has no standing to set aside or disrupt contractual undertakings by any of the defendants.

FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

FOURTEENTH: There is another action pending between the same parties for the same causes of action arising from the same facts and circumstances. Therefore, the Verified Complaint should be dismissed.

FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

FIFTEENTH: That the plaintiff's Verified Complaint fails to state sufficient facts to constitute a cause of action against these defendants.

FOR A SIXTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SIXTEENTH: That this Court lacks jurisdiction over the subject matter of this action inasmuch as there is no diversity of citizenship between the litigants as required by FRCP.

FOR A SEVENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SEVENTEENTH: That all or part of the action is barred by the Doctrine of Collateral Estoppel or *Res Judicata*.

FOR AN EIGHTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

EIGHTEENTH: The lawsuit brought by the plaintiff is entirely without merit and is frivolous, subject to sanctions.

FOR A NINTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

NINETEENTH: That the party making claims failed to mitigate damages.

FOR A TENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTIETH: The plaintiff's claims for punitive damages are barred and are devoid of merit.

FOR AN ELEVENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FIRST: The defendants, particularly the individually named defendants, are protected under a governmental immunity from claims of negligence or any other claims made by the plaintiff in this action. Each and every defendant is immune inasmuch as they carried out a duty in their role as public servants barring the claims made herein.

FOR A TWELFTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-SECOND: These claims are not ripe for determination before the Federal Court.

FOR A THIRTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-THIRD: The claims, especially the alleged pendant state-based claims are barred by failure to serve a timely Notice of Claim pursuant to Sections 50-e and 50-i of the General Municipal Law putting the defendants on fair notice of the claims for which recovery by the plaintiff is sought.

FOR A FOURTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FOURTH: The claims are barred by the failure of plaintiff to attend a hearing pursuant to Section 50-h of the General Municipal Law. The plaintiff's conduct in depriving the defendants of a 50-h hearing was sanctionable.

FOR A FIFTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FIFTH: Plaintiff failed to exhaust his administrative remedies and has not completed the application for a permit and have not filed before the Zoning Board of Appeals.

FOR A SIXTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-SIXTH: That this action was not commenced within the applicable time limits, therefore, the Statute of Limitations constitutes a complete defense to the plaintiff's action.

FOR A SEVENTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-SEVENTH: Allegations of any comments made in court are improper to allege as a basis to a lawsuit.

FOR AN EIGHTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-EIGHTH: "THE ESTATE OF RALPH SCORDINO" is not an entity subject to being sued.

FOR AN NINETEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-EIGHTH: The capacities of the defendants are misnamed in the lawsuit.

FOR A TWENTIETH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-NINTH: That any statements made by the defendants were substantively truthful,

or opinion, and constitute a complete defense to plaintiff's claims.

WHEREFORE, the answering defendants, VILLAGE OF BABYLON, KEVIN MULDOWNEY, TONY DAVIDA, MARY ADAMS, STEPHEN FELLMAN, SUZANNE

SCHETTINO, GERARD GLASS, Esq. and DEBORAH LONGO demand judgment against the plaintiff dismissing the Verified Complaint herein, together with costs and disbursements of this action.

Dated: Mineola, New York
January 25, 2021

Respectfully submitted,

KELLY, RODE & KELLY, LLP

BY: *Eric P. Tosca*
ERIC P. TOSCA
Attorneys for Defendants
330 Old Country Road - Suite 305
Mineola, New York 11501
(516) 739-0400
Our File No.: PDG/EPT 148530-752

TO: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road - Suite 250s
Melville, New York 11747
(631) 450-2515

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, I served a true copy of the foregoing Defendants' Answer to Plaintiff's Verified Complaint by mailing same in a sealed envelope, by first class mail with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road - Suite 250s
Melville, New York 11747
(631) 450-2515

Eric P. Tosca

ERIC P. TOSCA
E-Mail: eptosca@krklaw.com

ATTORNEY VERIFICATION

ERIC P. TOSCA, an attorney duly licensed to practice law before the courts of the State of New York and of the United States District Court, Eastern District, hereby affirms the truth of the following under the penalties of perjury:

I am a duly admitted and practicing Attorney-at-Law; that I am one of the attorneys for the defendants VILLAGE OF BABYLON; KEVIN MULDOWNY, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, MARY ADAMS, Mayor of the Village of Babylon; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO herein, and that I have read the foregoing ANSWER and know the contents thereof and that the same is true to my own knowledge, except as to those statements therein alleged to be upon information and belief and as to those statements, I believe it to be true.

The source of my knowledge is the contents of a file maintained in my office, which contains various reports of investigations, statements, interviews, copies of official documents, etc.

The reason this verification is not made by the defendants, is due to the fact that said defendants do not reside in the same county wherein I maintain my professional office; to wit: County of NASSAU.

Dated: Mineola, New York
January 25, 2021


ERIC P. TOSCA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER,

Plaintiff,

-against-

VILLAGE OF BABYLON; THE ESTATE OF RALPH SCORDINO, Former Village of Babylon Mayor, Village of Babylon Mayor, KEVIN MULDOWNY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon,

Defendants.
-----X

Index No. 2:18-cv-07011 JMA-AYS

Previously filed under
Index No. 2:21-cv-00014

**NOTICE FOR DISCOVERY
PURSUANT TO RULE 33
OF FEDERAL RULES OF
CIVIL PROCEDURE**

C O U N S E L O R S :

PLEASE TAKE NOTICE, that pursuant to Rule 33 of Federal Rules of Civil Procedure, you are required to serve upon the undersigned the following information within the time limits set forth in the Federal Rules of Civil Procedure.

1. The name, home address, and professional or office address of each person you intend to call as an expert witness at trial specifically including but not limited to any medical, economic, engineering, accident reconstruction design or other expert from whom you intend to elicit opinion testimony on any issue relating to liability or damages in the above captioned matter.

2. For each expert you intend to call at trial separately state the following in reasonable detail:

- (a) The subject matter on which such expert is to testify.
- (b) The qualifications of such expert as will be offered at trial.
- (c) The substance of the facts upon which such expert will rely.
- (d) The substance of the opinion to which such expert will testify.
- (e) A summary of the grounds for such expert's opinion.

3. If no experts will be called by you at trial, affirmatively so state.

PLEASE TAKE FURTHER NOTICE, that this demand is a continuing demand requiring disclosures of any demanded information obtained by you which would be required to be disclosed by you up to and including the time of trial immediately upon your obtaining or developing such information.

PLEASE TAKE FURTHER NOTICE, that the demanding party will seek preclusion or other appropriate relief at the time of trial with respect to the testimony of any expert concerning whom there has not been full reasonable disclosure pursuant to this demand.

Dated: Mineola, New York
January 25, 2021

Respectfully submitted,

KELLY, RODE & KELLY, LLP

BY: *Eric P. Tosca*
ERIC P. TOSCA
Attorneys for Defendants
330 Old Country Road - Suite 305
Mineola, New York 11501
(516) 739-0400
Our File No.: PDG/EPT 148530-752

TO: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road - Suite 250s
Melville, New York 11747
(631) 450-2515

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, I served a true copy of the foregoing Notice for Discovery Pursuant to Rule 33 of Federal Rules of Civil Procedure by mailing same in a sealed envelope, by first class mail with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road - Suite 250s
Melville, New York 11747
(631) 450-2515

Eric P. Tosca

ERIC P. TOSCA
E-Mail: eptosca@krklaw.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER,

Plaintiff,

Index No. 2:18-cv-07011 JMA-AYS

Previously filed under
Index No. 2:21-cv-00014

-against-

**NOTICE FOR DISCOVERY
AND INSPECTION**

VILLAGE OF BABYLON; THE ESTATE OF RALPH SCORDINO, Former Village of Babylon Mayor, Village of Babylon Mayor, KEVIN MULDOWNNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon,

Defendants.

-----X

C O U N S E L O R S :

PLEASE TAKE NOTICE, that pursuant to Rule 33 of Federal Rules of Civil Procedure, you are required to serve upon the undersigned within twenty (20) days of the date hereof, the following documents and information, except any demands that are subject to a stay and that shall be provided at such time the stay is lifted:

1. The name and address of any eyewitness to the occurrence which gives rise to this lawsuit known to the plaintiff or the plaintiff's representatives or known to any other party or party's representative making claim against this defendant, including but not limited to the identity of any alleged informant to the fire department as alleged in the complaint.

2. The names and addresses of any notice witnesses or persons with knowledge of the existence of any condition or state of facts which gives rise to this lawsuit known to the plaintiff

or the plaintiff's representatives or known to any other party or party's representative making claim against this defendant.

3. Full and complete copies of any and all statements made by the defendant, the defendant's agents or employees which are in the possession of the plaintiff or the plaintiff's representatives, or in the possession of any other party or party's representative making claims against this defendant, whether recorded, printed, typewritten or otherwise preserved, whether signed or unsigned.

4. Duly authorized hospital, office, physician, or other medical record release authorizations to obtain the complete hospital, office, or other record of every hospital, physician, nurse, or other medically oriented personnel or facility who have rendered treatment to the plaintiff for any injuries alleged to have been sustained as a result of the occurrence which gives rise to this lawsuit.

5. Duly authorized hospital, office, physician, or other medical record release authorizations to obtain the complete hospital, office, or other record of every hospital, physician, nurse, or other medically oriented personnel or facility who have rendered any treatment, care or performed any examinations upon the plaintiff for a period of five (5) years prior to the institution of this lawsuit.

6. True and complete copies of any and all accident reports prepared by or on behalf of the plaintiff or the plaintiff's representatives, or from information obtained from the plaintiff or the plaintiff's representatives, made in the regular course of business.

7. True and complete copies of any photographs in the possession of the plaintiff or the plaintiff's representatives of any instrumentality, or condition alleged to have been involved in

the occurrence which gives rise to this lawsuit, whether said instrumentality, condition automobile is under the possession and control of the plaintiff, this defendant, or any other person or entity.

8. True and accurate copies of all documents concerning the alleged disciplinary action taken by the fire department in plaintiff's possession and the identity of any informants.

9. True and accurate copies of all legal bills and related expenses claimed by the plaintiff for all claims alleged in the complaint.

10. Copies of all drawings, invoices, manuals, blueprints and other documents reflecting the design, plan and construction of the treehouse identified in the complaint and tree house accessories, including electrical equipment and wiring.

11. Copies of all applications for permits and underwriting certificates related to design and construction of the tree house identified in the complaint and the tree house accessories, including electrical equipment and wiring.

12. Copies of all contracts, proposals and invoices to or from any contractors or vendors related to the construction and design of the tree house identified in the complaint and the tree house accessories, including electrical equipment and wiring.

Where appropriate, true and complete copies of all the above requested documents will be given compliance.

PLEASE TAKE FURTHER NOTICE, that this demand is a continuing demand and the demanding party will object at time of trial to the introduction of any testimony or evidence which flows from the existence of such documents or information which have not been produced.

PLEASE TAKE FURTHER NOTICE, that unless this demand is timely and fully complied with, an appropriate application will be made seeking relief.

PLEASE TAKE FURTHER NOTICE, that any expense involved in duplicating the materials called for in this demand will be promptly reimbursed to the answering party upon representation of a proper bill.

Dated: Mineola, New York
January 25, 2021

Respectfully submitted,

KELLY, RODE & KELLY, LLP

BY: *Eric P. Tosca*
ERIC P. TOSCA
Attorneys for Defendants
330 Old Country Road - Suite 305
Mineola, New York 11501
(516) 739-0400
Our File No.: PDG/EPT 148530-752

TO: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road - Suite 250s
Melville, New York 11747
(631) 450-2515

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, I served a true copy of the foregoing Notice for Discovery and Inspection by mailing same in a sealed envelope, by first class mail with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road - Suite 250s
Melville, New York 11747
(631) 450-2515

Eric P. Tosca
ERIC P. TOSCA
E-Mail: eptosca@krklaw.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER,

Plaintiff,

-against-

VILLAGE OF BABYLON; THE ESTATE OF RALPH SCORDINO, Former Village of Babylon Mayor, Village of Babylon Mayor, KEVIN MULDOWNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon,

Defendants.
-----X

Index No. 2:18-cv-07011 JMA-AYS

Previously filed under
Index No. 2:21-cv-00014

**DEMAND FOR
COLLATERAL SOURCES**

C O U N S E L O R S :

PLEASE TAKE NOTICE, that you are hereby required to furnish to the undersigned within (30) days thereof pursuant to Rule 33 of Federal Rules of Civil Procedure all documents, bills, invoices, receipts or cancelled checks concerning indemnification, payment and/or reimbursements, in whole or in part, which plaintiff has received from collateral sources including - but not limited to - insurance, social security, workmen's compensation or employee benefit programs for the cost of medical care, custodial care, rehabilitation services, loss of earnings and other economic loss which the plaintiff will claim as special damages in this action.

PLEASE TAKE FURTHER NOTICE, that failure to comply the above mentioned request will render the plaintiff subject to available provisions provided under the Federal Rules of Civil Procedure and that this demand is to be considered a continuing demand.

Dated: Mineola, New York
January 25, 2021

Respectfully submitted,

KELLY, RODE & KELLY, LLP

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TO: LAW OFFICES OF CORY H. MORRIS
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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, I served a true copy of the foregoing Demand for Collateral Sources by mailing same in a sealed envelope, by first class mail with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

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EXHIBIT “G”

2:20-cv-07011-JMA-AYS | 2:21-cv-00014-JMA-AYS

United States District Court

Eastern District of New York

JOHN LEPPER and **NOELLE LEPPER**, individually and as parents and natural guardians of their infant children, **B.J.L.** and **B.I.**; and

JOHN LEPPER, individually and, as a resident taxpayer of the Incorporated Village of Babylon, on behalf of all those other resident taxpayers of the Incorporated Village of Babylon so unfortunate as to be similarly afflicted and suffering economic damage as a result of the expenditure of Village funds for the inappropriate and improper defense of individual village officials engaged in the persecution of John Lepper for providing a treehouse in which his infant children might play,

Plaintiffs

—against—

VILLAGE OF BABYLON;
THE ESTATE OF RALPH SCORDINO, former Mayor, Village of Babylon, by its Legal Representative John and/or Jane Doe; **MARY ADAMS**, former Village Trustee and now Mayor; **KEVIN MULDOWNEY**, Deputy Mayor, **ROBYN SILVESTRI**, Village Trustee, **TONY DAVIDA**, Village Trustee, **STEPHEN FELLMAN**, Village of Babylon Building Inspector; **SUZANNE SCHETTINO**, Department of Public Works; **GERARD GLASS**, Esq., Village of Babylon Attorney; **DEBORAH LONGO**, Planning Board, Village of Babylon,

Defendants

AMENDED CONSOLIDATED VERIFIED COMPLAINT

LAW OFFICES OF CORY H. MORRIS
Attorney for Plaintiffs
VICTOR JOHN YANNACONE, JR., *of counsel*

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AMENDED CONSOLIDATED VERIFIED COMPLAINT

Plaintiff John Lepper files this amended consolidated verified complaint by his attorneys, the Law Office of Cory H. Morris, pursuant to the direction of United States District Judge Joan M. Azrack entered on January 14, 2021.

PLAINTIFFS DEMAND A TRIAL BY JURY

PRELIMINARY STATEMENT

This is a civil action seeking a declaratory judgment, and equitable relief, together with compensatory, general, and punitive damages, costs, disbursements, and attorneys' fees from the Defendants for violating Plaintiff's civil, constitutional, and human rights, under the Fourth, Fifth, Eighth and Fourteenth Amendment to the United States Constitution and New York State Law; and for their negligence, abuse of process, negligent and/or intentional infliction of emotional distress, and prima facie tort resulting in injury and damage to the Plaintiff, together with judgment on behalf of himself and all those other resident taxpayers of the Incorporated Village of Babylon so unfortunate as to be similarly afflicted and suffering economic damage as a result of the expenditure of Village funds for the inappropriate and improper defense of individual village officials engaged in the persecution of John Lepper for providing a treehouse in which his infant children might play .

INTRODUCTION

1. Plaintiff, John Lepper, alleges that Defendants, jointly and severally, individually and collectively, intentionally, knowingly, wantonly, negligently, and/or recklessly, sought to

and did wrongfully deprive him of his civil, constitutional, and human rights by committing acts under color of law to deprive him of his civil, constitutional, and human rights.

2. Plaintiff, John Lepper, alleges that Defendant Village of Babylon was negligent in training, hiring and supervising its Village of Babylon Attorney, Defendant Gerard Glass, and was deliberately indifferent to the actions of Gerard Glass who, among other things, sought to profit off of the malicious prosecution of Plaintiff in derogation of prosecutorial ethics.
3. Plaintiff, John Lepper alleges that Defendant Village of Babylon is liable to the Plaintiffs for abuse of process, malicious prosecution.
4. Defendant Village of Babylon conspired in prosecuting Plaintiff, an innocent taxpayer, in the hiring and supervising its employees, inclusive of Defendant Gerard Glass, who profited enormously from the same prosecution and being sued as a Defendant under Docket No. 18-cv-7011.
5. Defendants, individually and collectively, knew and had reason to know that the seizure, false prosecution, threats against Plaintiff, accusatory instruments charging “treehouse without a permit” and retaliation against Plaintiff, would cause damages and were intended to silence the Plaintiff at enormous costs to the Village of Babylon taxpayer.
6. Accordingly, Defendant Village of Babylon is liable to the Plaintiff for abuse of process, malicious prosecution, retaliation and for conspiring to condone and encourage such civil rights violations together with conspiring to and violating Plaintiff’s Civil Rights.

7. As a result of the Defendants' actions or lack thereof, Plaintiff John Lepper suffered emotional scarring and suffering, and incurred significant cost and expenses due to the Defendants' actions, including but not limited to substantial legal fees, loss of good name and standing in the community, emotional distress and other cost/expenses.

JURISDICTION AND VENUE

8. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331 and 1343.
9. This Honorable Court is requested to exercise supplemental jurisdiction with respect to Plaintiffs' State Law claims pursuant to 28 U.S.C. §1367.
10. This action is brought pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985, and 42 U.S.C. § 1986.
11. This action is also brought pursuant to the Declaratory Judgment Act, under 28 U.S.C. §§ 2201–2202, to address the specific and anticipated harm Plaintiffs and all other similarly situated residents within the Village of Babylon.
12. Declaratory relief is necessary whether or not Defendant Village of Babylon discontinues prosecution against John Lepper so long as the threat of prosecution for violation of Village of Babylon Code Section 365–26 continues to exist.
13. Venue in the Eastern District of New York is proper under 28 U.S.C. § 1391, based on the fact that the place where the events and violations herein alleged occurred was in Suffolk County, New York.

ADMINISTRATIVE PROCEEDINGS AND TIMELINESS

14. This action has been commenced within the three-year statute of limitations applicable to federal civil rights actions brought pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985 and 42 U.S.C. § 1986.
15. There are no effective New York state or federal administrative remedies available to the John Lepper.
16. Plaintiff has exhausted any potentially effective administrative remedies.
17. On or about December 7, 2018, Plaintiffs filed a Notice of Claim against the Village of Babylon.
18. Thereafter Plaintiffs were available for the purpose of an examination under the provisions of General Municipal Law § 50-h, however, Defendants chose not to conduct such examination.
19. On January 9, 2019, Defendants stipulated to waive the affirmative defense(s) of jurisdiction and service of process.
20. On or about March 10, 2020 Plaintiff John Lepper filed a Second Notice of Claim against the Village of Babylon.
21. Plaintiff John Lepper has been examined under the provisions of General Municipal Law § 50-h.
22. Defendants refused to adjust the claim and more than ninety (90) days have passed.

PARTIES

23. Plaintiff, JOHN LEPPER is a citizen of the United States, an honorably discharged United States Marine presently employed as a member of the Fire Department of the City of

New York and resides at 59 Cockenoe Avenue, in the Incorporated Village of Babylon, Suffolk County, New York.

24. John Lepper is a lawful owner together with Noelle Lepper, his wife, of 59 Cockenoe Avenue, a corner lot of 7,575 square feet (0.1739 acres) with 50.50 feet frontage along Cockenoe Avenue, a 50 foot public roadway, and 150 feet frontage along Wampum Road, a 33 foot public roadway. in the Incorporated Village of Babylon, in the Town of Babylon, Suffolk County, New York and identified on the Suffolk County Tax Map as parcel 0102–004.00–01.00–100.00. The property appears in its present configuration as Lots 19B & 19C in Block F as shown on Map of Sampwam Park–Annex filed on October 31, 1921 as Map No: 758 in the Incorporated Village of Babylon, Town of Babylon, Suffolk County, New York (hereinafter referred to as the “Subject Property”).
25. As a resident taxpayer of the Incorporated Village of Babylon, Plaintiff John Lepper is a suitable and proper representative Plaintiff with sufficient knowledge of the facts and circumstances surrounding the subject matter of this litigation to act as a Representative Plaintiff for the purpose of preventing waste of Village funds and recovery of funds already improperly expended by the Incorporated Village of Babylon.
26. Infant B.J.L. is a minor and the natural child born of the union of John Lepper and Noelle Lepper.
27. Infant B.L. is a minor and the natural child born of the union of John Lepper and Noelle Lepper.
28. At all times relevant in this Complaint, and upon information and belief, Defendant Village of Babylon, is a recipient of

federal funding and was a recipient of federal funding at the time of the events complained of herein.

29. Defendant Village of Babylon is an incorporated Village located within the Town of Babylon in Suffolk County, New York.
30. Defendant Village of Babylon is governed by an elected Mayor and four elected Trustees, collectively the Babylon Village Board.
31. According to information posted on the Village of Babylon website at <http://www.villageofbabylonny.gov/> Defendant Ralph Scordino, who was the duly elected Mayor has died before the date of this complaint and Defendant Mary Adams is now the Mayor, Defendant Kevin Muldowney, is the Deputy Mayor, and Defendants Robyn Silvestri, Tony Davida, Dominic Bencivenga and Anthony Cardali were and/or are Village of Babylon Trustees.
32. Upon information and belief, Ralph Scordino died on or about October 29, 2020, however, Defendants, individually, collectively, or by counsel have not yet filed a copy of his death certificate with this Court in this action.
33. Upon information and belief, no Legal Representative (or next of kin) has been served or appointed to represent the Estate of the late Ralph Scordino. See D.E. 90.
34. Upon information and belief, Defendant Stephen Fellman is the Village of Babylon Building Inspector; Defendant Suzanne Schettino, directs the Department of Public Works; Defendant Gerard Glass, Esq. is the Village of Babylon Attorney; and Defendant Deborah Longo, is involved in administration of the Village of Babylon Planning Board.

35. All of the individual named Defendants are being sued in both their individual and official capacities.

THE FACTS

36. This is the second lawsuit filed by John Lepper against these actors, the first seeking injunctive relief related to the pending destruction and forcible removal of the treehouse discussed herein and filed as D.E. 8, on December 17, 2018 under Docket Number 18-cv-7011:
37. In April, 2018, Plaintiff, John Lepper, found a syringe and a hypodermic needle which he reasonably presumed to be utilized in illegal drug use, in his front yard when he was playing with his children. He informed his neighbors immediately and was outspoken in trying to find a remedy to shield his children from potential disease and harm caused by used hypodermic needles.

THE CHILDREN'S TREEHOUSE

38. The following is a true and accurate aerial view of the Lepper property and its surrounding neighborhood identifying the location where the hypodermic needle was found.



39. On or about May 3, 2018, Plaintiff John Lepper began to utilize timbers from an old boat house that was destroyed in Superstorm Sandy to create a treehouse to insulate his children from the hypodermic needles he found in and around his property at 59 Cockenoe Avenue within the Village of Babylon.
40. The following Lepper family neighbors can see the treehouse from their property: Joe and Joanne Mineo and their sons M.M. and N.M.; Pay and Keirsten Murphy and their daughter G.; Kevin and Lyndsey and their children A. and S.; Joe and Katelyn and their two pre-school-age children, all of whom live on Cockenoe Ave; and Mike And Josephine Domingo and their three college-age daughters who live on Wampum Rd.

41. By letter dated May 10, 2018, Village of Babylon Building Inspector Stephen Fellman informed Mr. Lepper that “It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit.”
42. Village of Babylon Code § 365–26, § A, states: “No building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector. The Building Inspector shall require that the application for a permit and the accompanying plot plan, plans and specifications shall contain all information necessary to enable him to determine whether the proposed building addition or structural alterations or change of use to an existing building comply with the provisions of this chapter and Chapter 171, Flood Damage Prevention, where applicable.”
43. Village of Babylon Code § 365–26 C(3) states “A building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet.”
44. In response to the May 10, 2018 letter from Defendant Fellman, Plaintiffs stopped work on the treehouse for their children.
45. Upon information and belief, Defendant elected officials, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee and Mary Adams, Village Trustee were jointly and

severally, individually and collectively, responsible for allowing such notice to be sent to Plaintiffs.

46. Defendant elected officials, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee and Mary Adams, Village Trustee jointly and severally, individually and collectively, were responsible for the continuing violations of the civil and Constitutional rights of and retaliation Plaintiff for attempting to assert those rights.

JOHN LEPPER'S APPLICATION

47. On or about May 21st, 2018, Plaintiff John Lepper visited the Building Department office of Defendant Village of Babylon; completed a building permit application and submitted a front elevation / framing drawing with a copy of a recent survey of the Lepper Family Home, a copy of which is annexed hereto and made a part of this complaint designated Exhibit 1 (D.E. 26, Exhibit 4).
48. An unidentified Building Department employee, "Jane Doe", to whom Plaintiff John Lepper submitted the application commented that she usually did not receive such a detailed drawing from homeowners.
49. While at the Village of Babylon Building Department on or about May 21, 2018, Plaintiff John Lepper spoke with another employee of Defendant Village of Babylon, Holly Zappala, and told her that a used hypodermic needle was found on his property, and other used hypodermic needles were being found in the area and that he had concerns for the well-being of his family.
50. On or about May 21, 2018, while at the Village of Babylon Building Department office, John Lepper spoke with another

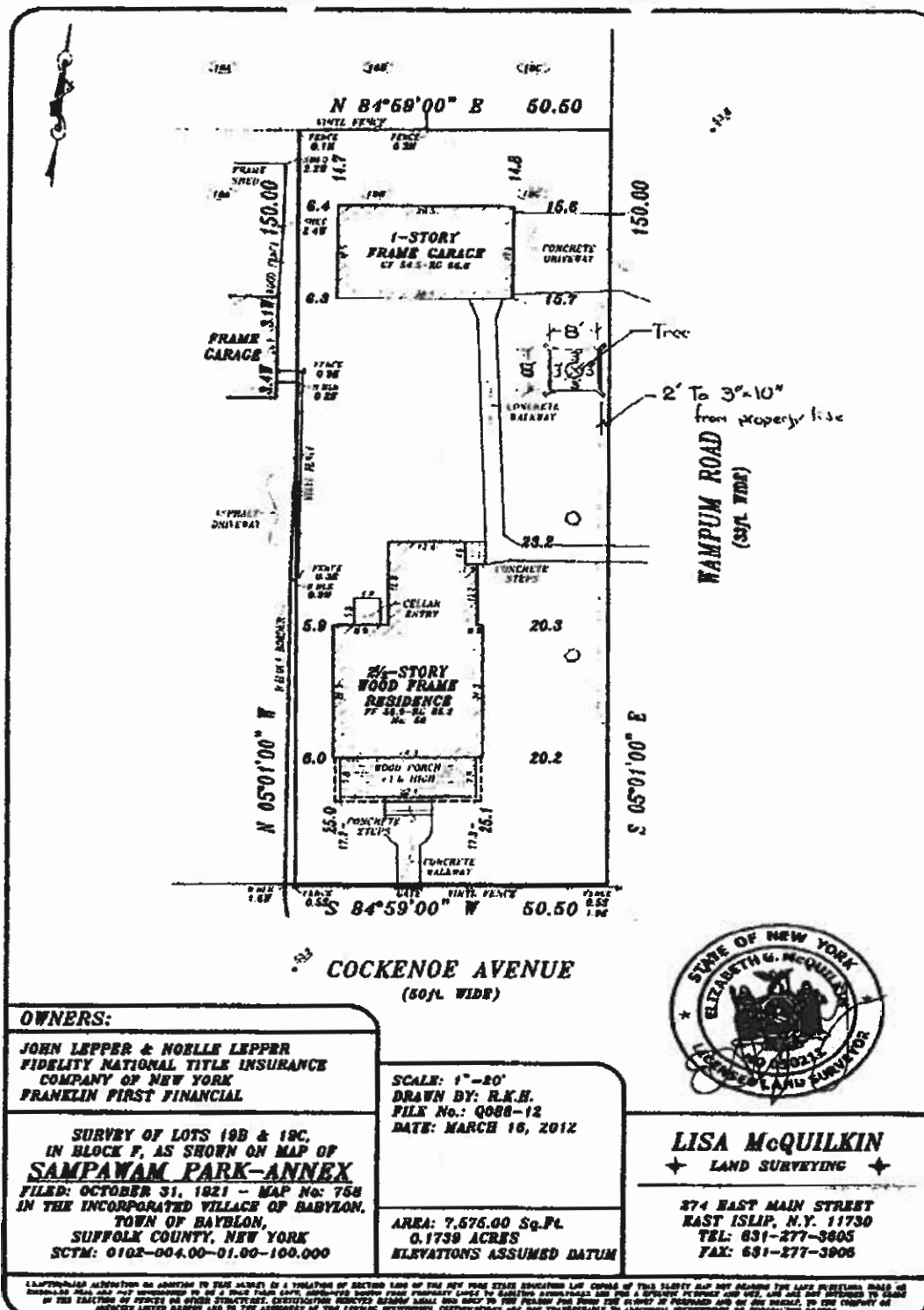
employee of Defendant Village of Babylon, Holly Zappala, and told her that he had found a used hypodermic needle on his property, and other used hypodermic needles were being found in the immediate neighborhood of his property and that he had concerns for the well-being of his family.

51. Ms. Zappala told Plaintiff John Lepper that Defendant Village of Babylon was aware of drug-related crimes and the presence of hypodermic instruments prior to April, 2018 and that she and the Village of Babylon administration may be aware of criminal activity occurring on the subject premises and toward the Lepper Family.
52. Plaintiff John Lepper, confident he was protecting his family and speaking out toward remedying the crime occurring on his property and the scourge of heroin in his community, spoke to and informed everyone present in the Village of Babylon building department on May 21, 2018 that it was his intention to build the treehouse for his son's birthday on July 7th, 2018 to allow his son the liberty and free use of the subject premises while maintaining a safe distance from the criminal activity in the neighborhood and the larger criminal narcotic problem known to the Village of Babylon.
53. The following is a true and correct copy of the survey of the Lepper property indicating the location of the children's treehouse:

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY BLANK.

01/23/2013 08:38 FAX

002



54. Upon information and belief, Defendants jointly and severally, individually and collectively, failed to act upon or even acknowledge Plaintiffs' efforts to comply with the Village of Babylon Code.

OTHER STRUCTURES IN THE VILLAGE OF BABYLON

55. For example, Defendants actually responded to others similarly situated who attempted to comply with the code, such as the application of 99 Park Avenue, Village of Babylon, County of Suffolk, State of New York:

VILLAGE OF BABYLON
153 West Main Street
Babylon, New York 11702
(631) 669-1300
BUILDING DEPARTMENT
BUILDING PERMIT FORM

Application is hereby made to Code Enforcement Official (Building Inspector) of the Village of Babylon, NY, for the approval of plans and specifications to build or install as herein described. The applicant agrees to comply with all the provisions of the code of the Village of Babylon and/or any other applicable Federal, State and Local codes.

NOTE: Survey or site plans must accompany permit application. (For commercial or industrial applications, consult the Village of Babylon Planning Board.)

Permit(s) requested (check one or more below)
Numbers refer to questions on right that must be answered.

☒ Building Permit
☐ Commercial ☐ Industrial ☐ Residential
☐ Main Building ☐ Addition 1-8
☐ Accessory Building ☐ Addition 1-8
☐ Interior Alteration ☐ Addition 1-8
☐ Two-Family Special Permit 1-3, 7, 8
☐ Change of Use or Occupancy 1-3, 7, 8
☐ Fire Damage Repair 1-3, 8
☐ Fireplace 3, 7
☐ Board of Appeals 1-3, 7, 8
☐ Swimming Pool ☐ In-Ground ☐ Above Ground
☐ 4 foot safety fence required 1-3, 7, 8
☐ Demolition (Valid only if mob.) 1-3, 7, 8
☐ Underground Tank Installation (plus plumbing permit) 1-3, 8, 9
☒ Other - Explain 1-8

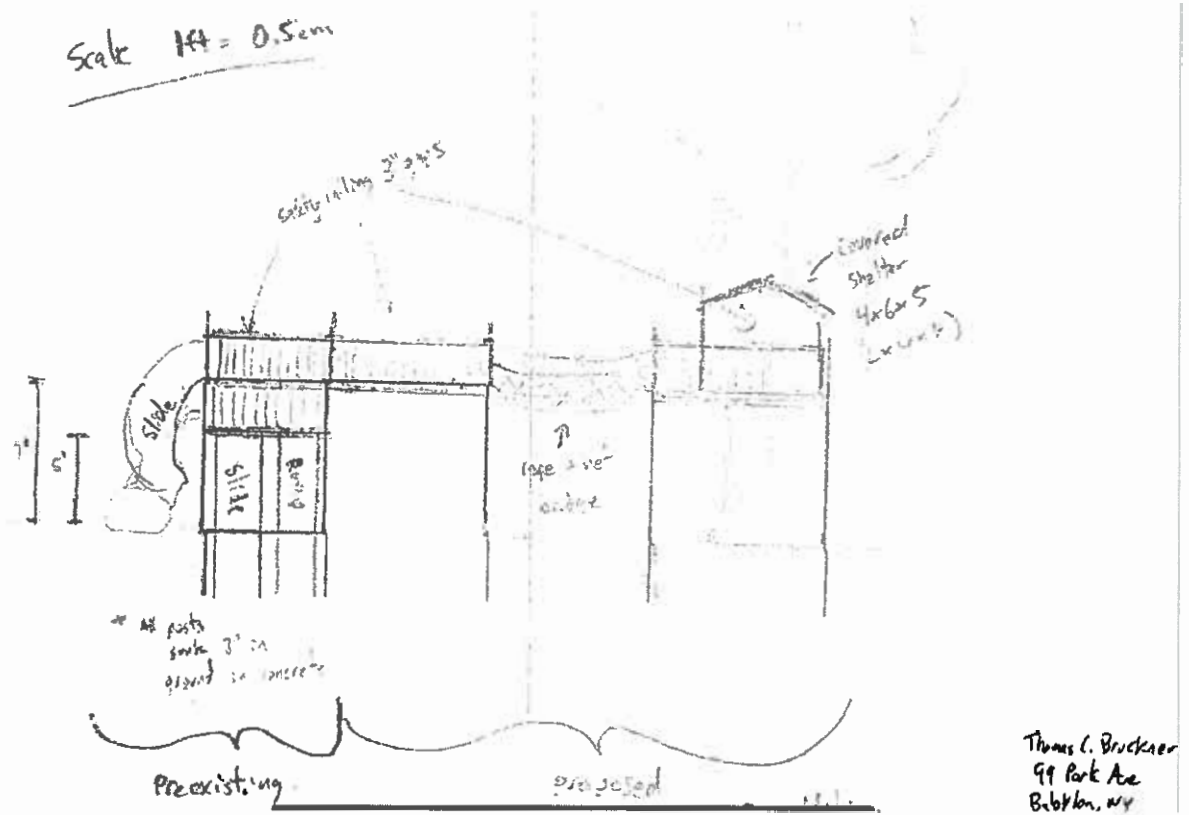
RECEIVED
JUN 25 2020
VILLAGE OF BABYLON
BUILDING DEPARTMENT

102- Section Block Lot Flood Zone
Estimated Value of Construction \$ Fees
Permit Number:
Current Zoning A-9 Approved By: Date Checked:
Permit Application Denied: Why?
Is this permit a result of a Zoning Board of Appeals approval? ☐ Yes ☐ No
If yes, what conditions, if any, were set:
Board of Appeals Case #:
Pre-site inspection made by: Date:
Approval for Issuance of Permit: Date: 6/26/20
Issued by: Date: Checked by:
Certificate of Occupancy #

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.
1. PRESENT USE of property Single Family Home
2. PROPOSED USE Addition of a playground/swing set
3. DESCRIPTION OF PROPOSED WORK Add addition to current 24,645 sq. ft. playground
4. FLOOR AREA to be constructed or altered: 36 + new 865 = 131 sq. ft. Total Square Feet
5. SIZE of property (FSI) x (ISI) = 24,645 sq. ft. or 0.57 Acres
6. HEIGHT of building from average grade to highest point 12 Feet
7. PROPERTY LOCATION 99 Park Ave Babylon NY 11702
ON ☐ N ☐ S ☐ E ☐ W Side of Park Avenue
8. ORIGINAL CERTIFICATE OF OCCUPANCY #
Certified as:

APPROVED

56. Upon information and belief, persons like Thomas C. Bruckner, submitted handwritten drawings such as the following that were acted upon while Plaintiffs were not:



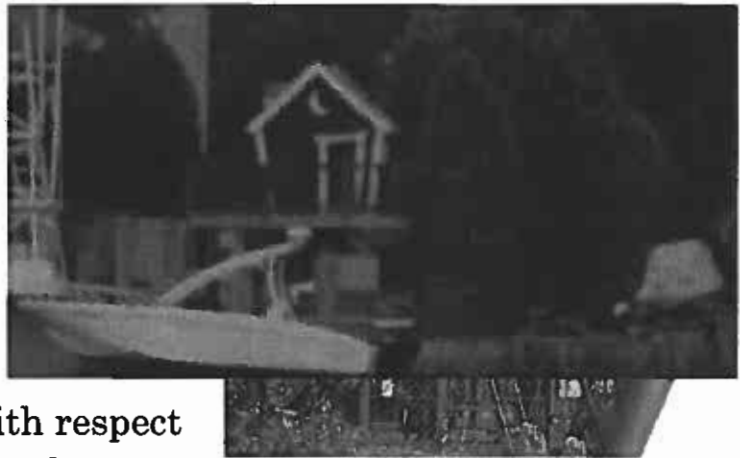
57. Defendants, jointly and severally, individually and collectively, knew and/or had reason to know that the Plaintiff Lepper parents sought to use their real-property in a manner that would contribute to and benefit the education and personal growth of their infant children.
58. Defendants, jointly and severally, individually and collectively, never intended to act upon Plaintiffs' building permit application.
59. Defendants, jointly and severally, individually and collectively, apparently intended to take advantage of the voluntary, but not legally required, application filed by John Lepper for a permit to construct a tree house for his children as a vehicle to charge Plaintiffs with violations of Village of Babylon Code Section 365-26 and collect fines from Plaintiffs

by simply refusing to consider and act upon the application by Plaintiff, John Lepper.

60. On June 15, 2018, Plaintiff John Lepper called the Village of Babylon Building Department to check on the status of his application and was told by an unidentified employee, Jane Doe, that no determination had been made as to whether Mr. Lepper's treehouse was in violation of the town code.
61. Plaintiff John Lepper immediately ceased construction and assembly of the partially fabricated treehouse as soon as he had been ordered to do so by Building Inspector Fellman.
62. Determined to either delay construction of an innocuous and code-compliant treehouse solely for the benefit of minor children, or harass and intimidate the Lepper family by destroying their infant son's eagerly anticipated birthday present, the Defendants, jointly and severally, individually and collectively, refused to issue the appropriate building permit or withdraw the "stop work" order.
63. Within hours of his son's birthday, Plaintiffs John decided to complete the treehouse and raise his children in the manner and safe-guard them from what he had already advised the Defendants was the scourge of drug abuse and the criminal activity known to be occurring in his neighborhood and already visited upon his property.
64. Mr. Lepper's neighbor had a similar structure in the air, abutting the property line, and Village of Babylon officials know about the same structure yet chose to prosecute John Lepper not his neighbor or others.

65. In 18-cv-7011, John Lepper presented photographic evidence to the Defendants and this Honorable Court that a number of treehouses and similar structures existed throughout the Incorporated Village of Babylon but not subject to the onerous requirements imposed upon John Lepper.

66. Other treehouse/unpermitted structures may be placed close to the water and perhaps may incur maritime violations should the Defendants peer deep enough into this intellectual abscess that continues to persist with respect to the Lepper family treehouse and, specifically, John Lepper.



67. The following is a true and accurate photograph of a similar such structure existing within the Village of Babylon, County of Suffolk, State of New York:



68. While these treehouse type structures, mostly utilized by children as part of Americana—that pursuit of happiness for which the United States of America professed



belongs to all— come in all shapes and sizes and nearly all of them do not have building permits:

69. The following is a true and accurate photograph of a another such structure existing within the Village of Babylon, County of Suffolk, State of New York that does not seem to be a treehouse but most certainly abuts the property line and

appears to have a finished roof and siding, yet has not been subject to the onerous requirements, prosecutions, fines or threats imposed upon John Lepper and his



family, as considered in Docket No: 18-cv-7011:

70. More recently, on or about June 19, 2020, one Richard J.J. Sullivan, Jr. filed an application with the Building Department of the Village of Babylon a copy of which was produced by the Defendants only after Plaintiff filed a demand under the New York State Freedom of Information Law (FOIL). A copy of that Building Permit Application is attached hereto and made a part hereof as the fourth page of Exhibit 2, the FOIL production with respect to 250 Fire Island Avenue. See D.E. 103.
71. A copy of photographs of the Sullivan treehouse produced by the Defendants in response to Plaintiff's FOIL demand is attached hereto and made a part hereof as the sixth through ninth pages of Exhibit 2.

72. On or about July 2, 2020, Defendant Stephen R. Fellman issued Certificate of Occupancy No. 20-00106 to “Maintain Play Structure” at 250 Fire Island Avenue. See *Id.*

THE PROSECUTION OF JOHN LEPPER

73. On July 19, 2018, John Lepper received by certified mail three accusatory instruments dated July 11th, 12th & 13th each of which stated John Lepper was in violation of Village of Babylon Code § 365-26 for construction of a treehouse without a permit.
74. In response, on July 19, 2018, Plaintiff John Lepper immediately visited the Village of Babylon Building Department to inquire about the three summons he had received. He was told that he needed to make an appointment with Building Inspector Fellman and a meeting was scheduled for July 24, 2018.
75. Plaintiff John Lepper met with Defendant Building Inspector Fellman on July 24, 2018 and asked Defendant Building Inspector Fellman about each essentially identical citation which merely concluded that a “treehouse” violated Village of Babylon Code § 365-26. In response, Defendant Building Inspector Fellman stated that Mr. Lepper owed \$250 for the first accusatory instrument, \$500 for the second accusatory instrument and \$1,000 for the third accusatory instrument.
76. Plaintiff John Lepper met with Defendant Building Inspector Fellman on July 24, 2018 and asked Defendant Building Inspector Fellman about each essentially identical citation which merely concluded that a “treehouse” violated Village of Babylon Code § 365-26. At that time, Mr. Lepper had not received any notice of action on his application or any notice

that he was in violation of the Code for providing a treehouse for his children.

77. In response, Defendant Building Inspector Fellman stated that Mr. Lepper owed \$250 for the first accusatory instrument, \$500 for the second accusatory instrument and \$1,000 for the third accusatory instrument.
78. Plaintiff John Lepper protested to Defendant Building Inspector Fellman that not only were such fines unwarranted and excessive but that no prior notice of any violation had been provided to the Lepper family.
79. Building Inspector Fellman told Mr. Lepper to resolve the matter in Court on August 14, 2018.
80. Upon information and belief, Defendant Village of Babylon is more concerned with punishing taxpaying residents and extorting unconscionable fines from them for questionable violations of obscure and arcane, vague and ambiguous ordinances extracting fines out of law abiding resident property owners than providing municipal services such as promptly processing an application for a building permit.
81. Among the parents and children who visited the Treehouse prior to August 14 hearing were: Joe and Joanne Mineo and their sons, M.M. age 14 and N.M. age 16; , Pat and Kirsten Murphy and their daughter G.M., age 7; Terri McSweeney and Cindy McSweeney with E.M., age 7 and P.M., age 5; Steve Kazda and Amanda Kazda and their sons, J.K., age 6 and J.K. age 4; Mike Columbia and Christina Columbia and their daughters, C.C., age 6 and C.C., age 4; Mike Pagamo and Doreen Pagamo and M.P., age 8 and M.P., age 6; Charlie Lepper and Deena Lepper and their children, J.L., age 14;

J.L., age 10, and C.L., age 8; a 93 year old WWII veteran, and Barbra who is over 65 years of age.

VILLAGE JUSTICE COURT PROSECUTION I

82. Plaintiff John Lepper who is a New York City firefighter sought a continuance of the hearing scheduled for August 14, 2018 from the afternoon session of the Court to the evening session in order for him to attend a memorial service for a brother firefighter who had died of illnesses from service at the 9/11 scene. Village Judge John T. Rafter denied the request and Firefighter Lepper was forced to leave the Memorial service before it was completed, arriving in Court at precisely 1400 hours still in his Class A uniform.
83. Village Judge John T. Rafter and Defendant Gerard Glass, the Babylon Village attorney acting as the prosecutor both knew that Mr. Lepper was unrepresented by counsel, and that he was facing fines which might amount to \$1,750 together with court costs and the possibility of continued and continuing prosecution, yet at no time did Village Judge Rafter or Village Attorney Glass ever warn the Defendant or advise him not only of his right to counsel, but because of the questionable nature of the charges and the circumstances of the prosecution the real need to consult an attorney before proceeding any further in his own defense.
84. Upon information and belief, the wife of Village Judge John T. Rafter works with the complainant who instigated the prosecution of the Lepper Family for erecting a treehouse for their children and the children of the neighborhood.
85. Upon information and belief, Defendant elected officials, Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village

Trustee and Mary Adams, Village Trustee conveyed to Village Justice John Rafter and other employees of Defendant Village of Babylon such as Building Inspector Fellman their desire to collect money from fines following convictions of Village of Babylon residents who had the temerity to challenge the unsupported judgment of Defendant Building Inspector Fellman that a violation of Village of Babylon Code Section 365–26 existed.

86. Defendants, jointly and severally, individually and collectively, engaged in this course of conduct to raise revenue and receive monies to which Defendant Village of Babylon would not otherwise be entitled.
87. On or about August 14, 2018, Stephen Fellman, as Babylon Village Building Inspector wrote to Mr. Lepper declaring that “Per § 116 Unsafe Structures of the International Building Code the tree house at the above referenced premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy is issued.”
88. There is no substantial credible evidence that the Village of Babylon ever adopted the International Building Code nor incorporated its § 116 as part of the Village of Babylon Code.
89. No substantial credible evidence has ever been presented showing that the Lepper family treehouse is in any way unsafe for its intended use, an arboreal playhouse, by the Lepper children and other children.

THE VILLAGE COURT PROCEEDINGS II

90. Defendant Village Attorney Glass requested an adjournment of the hearing scheduled for September 4, 2018 and Village Judge Rafter issued a verbal “stop work” order and asked Mr.

Leper “to unplug the light.” Then he adjourned the case to September 18, 2018.

91. Upon information and belief, on September 18, 2018, Village Judge Rafter learned that the office of Defendant Village of Babylon Mayor had received a complaint regarding John Lepper.
92. Upon information and belief, the late Defendant Mayor Ralph Scordino played golf with Village Judge John T. Rafter and discussed matters pending in the Village Court, including the prosecution of John Lepper.
93. Village Judge Rafter never informed Mr. Lepper, who was appearing pro se without benefit of counsel, of his rights to receive information about the complaint and the complainant; his right to challenge the accusatory instruments that merely stated, “Tree House” and were unsigned as legally insufficient.
94. Nevertheless, Village Judge Rafter did inquire of Mr. Lepper, pro se, about his efforts at complying with the Village of Babylon Code § 365–26 and the permit application which Mr. Lepper voluntarily filed.
95. Mr. Lepper informed Village Judge Rafter that his building permit application had been accepted by the employees of the Village of Babylon Building Department.
96. The following interaction took place between Mr. Lepper and Village Judge:

JUDGE RAFTER: Okay . Did you have an understanding of what the purpose of the permit is?

MR. LEPPER: Yes sir .

JUDGE RAFTER: What was your understanding of what the purpose of the permit was?

MR. LEPPER: A construction permit was required for a structure being put up according to building code 365–26 it's not required for under 90 square feet. And I explained that to Mr. Fellman .

JUDGE RAFTER: I will interpret the code, sir .

MR. LEPPER: Okay .

JUDGE RAFTER: Neither you nor Mr. Fellman will interpret the code. (Trial transcript of September 18, 2018, 10:3–23:)

97. Already, Village Judge Rafter was imputing fault on the pro se Defendant, John Lepper who had attempted to comply with what was a patently vague and ambiguous ordinance:

JUDGE RAFTER: Did you have an understanding of that before you undertook the construction?

MR . LEPPER: Not exactly, sir. Because I did not think that a permit was required for what I was putting up. (Trial transcript September 18, 2018, 11:12–19.)

98. Village Judge Rafter continued to make the case for the prosecutor, Defendant Village Attorney Glass, who at no time objected to the line of inquiry of the accused, Mr. Lepper:

JUDGE RAFTER: Did you contact the building department before you began construction or even contemplated construction of a tree house?

MR. LEPPER: Yes. On the 19th when I submitted the application. Prior to the platform no , sir. I did not think a permit was required for a tree house. I was not sure. (Trial transcript September 18, 2018, 12:2–14)

99. Rather than credit the sworn testimony of John Lepper. A pro se Defendant, and presumed innocent until proven guilty beyond reasonable doubt, Village Judge Rafter continued to push the burden onto Mr. Lepper who provided sworn

evidence that he submitted a permit application prior to construction and prior to the issuance of any accusatory instrument by Village of Babylon:

JUDGER RAFTER: What is the basis of your objection?

MR . LEPPER: That was submitted on May 19th after I received the letter from Mr. Fellman regarding construction of the tree house without a permit. That was accepted by the office upstairs on May 19th and it was complete.

JUDGE RAFTER : You note there is no date on this. Do you have any proof as to when it was received?

MR . LEPPER : I was given a copy of the drawing I made and the survey that it was received. (Trial transcript September 18, 2018, 35:7–23)

100. Determined to convict the pro se Defendant John Lepper, Village Judge Rafter interrupts Defendant Village Attorney Glass when questioning Defendant Building Inspector Fellman during the trial about Mr. Lepper's contention that the Lepper Family Treehouse did not require a permit:

MR. GLASS: Mr. Fellman, it's your contention that under the Babylon Village code 365–26 there was no building permit for this structure -- this tree house, correct?

MR, FELLMAN: Correct.

MR. GLASS: Is there any provision of the Babylon Village code that would exempt one in the Village of Babylon from having to obtain a building permit based up on the facts you have testified to?

JUDGE RAFTER: Mr. Glass , I think that calls for a conclusion of law. So I am not going to permit him to answer that.

MR. GLASS: Okay. I have nothing further .

JUDGE RAFTER: You can ask in his opinion as a violation of the code and then set forth the facts upon which he bases his opinion. And then I would make the ultimate determination.

MR . GLASS: Judge, perhaps this should be the question then. Is there any provision of the code that exempts tree houses from obtaining a building permit?

MR . FELLMAN: No .

MR. GLASS: Okay. I have nothing further judge. (Trial transcript September 18, 2018, 39:11–25, 40:2–22)

101. Most telling is the testimony from Defendant Building Inspector Fellman that “we can issue violations every 24 hours.” (Trial transcript September 18, 2018, 45:11–12)
102. Village Judge Rafter convicted John Lepper by Order dated October 17, 2018 yet, as was stated on the record on November 20, 2018, did not recuse himself or allow further inquiry into his wife’s relationship with the complainant who, upon information and belief, submitted a complaint against the Lepper Family Treehouse.
103. In his decision, Village Judge Rafter stated that the “testimony of Stephan Fellman...established that he visited the premises in question on May 9, 2018, following receipt of a complaint in the Mayor’s office that a treehouse was being constructed,” yet no such complaint was ever shown to Mr. Lepper although he requested a copy on several occasions, nor was it produced during the trial.
104. To date no such complaint has been produced albeit it is known and John Lepper has reason to know that it is the product of the conspiracy between and among the Defendants.

THE ORDER OF VILLAGE JUSTICE RAFTER

105. On or about October 17, 2018, after a trial singularly deficient in the procedural due process which should have been afforded a pro se defendant in a quasi-criminal proceeding,

Mr. Lepper was found in violation of § 365–26 of the Village of Babylon Code based upon a reference by Hon. John T. Rafter to the Merriam-Webster definition of a building without any citation to the edition and year of publication of that dictionary or explanation of whether it had ever been adopted as an element of the Village of Babylon Code.

106. The Order by Village Judge Rafter finding John. Lepper in violation of § 365–26 of the Village of Babylon Code required Village Judge Rafter to use a definition of “building” from a dictionary since it was not defined in the Village of Babylon Code: “The Merriam-Webster Dictionary defines a building as follows; A structure that is designed or intended for support, enclosure, shelter or protection of persons, animals or property having a permanent roof that is support by columns or walls.” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 1)
107. Without referring to the remaining provisions of the Village of Babylon Code governing children’s play gyms and the expansive use of “any combination,” Judge Rafter states “The Court hereby specifically finds that the treehouse in question constituted a “building” within the meaning of the subject Code section.” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 3)
108. In that same October 17, 2018 Order finding Mr. Lepper in violation of § 365–26 of the Village of Babylon Code Village Judge Rafter states, “it is noted that the Notice of Violation is not signed by any representative of the Village of Babylon.” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2)

109. In his October 17, 2018 Order finding Mr. Lepper in violation of § 365–26 of the Village of Babylon Code Village Judge Rafter finds that “Defendant [Mr. Lepper] did apply for a permit” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2.) but then states without any reference to the record, “but his application was deemed incomplete as it did not contain a drawing from a licensed architect or engineer.” (Decision and Order of Village Justice John Rafter dated October 17, 2018, p. 2.)
110. The Village of Babylon never required “a drawing from a licensed architect or engineer” from any other “elevated playhouse” or treehouse that now exists in the Village.
111. There is no evidence that the Lepper family was ever informed by any representative of the Village of Babylon that such a “drawing” was required for a children’s tree house of less than 90 square feet floor area.
112. If, in fact, the Village of Babylon Code Section 365–26 does require such an expensive document to obtain a permit for a children’s tree house of less than 90 square feet of floor area it essentially prevents a homeowner from the legal and proper use of their real property and is on its face a violation of Plaintiffs’ civil, constitutional and human rights associated with title to real property and the quiet enjoyment of that property as a family.
113. Indeed, as per the application of Thomas C. Bruckner concerning 99 Park Avenue, Village of Babylon, County of Suffolk, State of New York, and the application of Richard J.J. Sullivan, Jr. concerning 250 Fire Island Avenue, this requirement was pretextual.

POST-TRIAL ACTIONS AGAINST JOHN LEPPER

114. On October 17, 2018, after the Order of Village Judge Rafter was delivered by code enforcement, John Lepper went to Village Court to inquire about appeal.
115. The next day, October 18, 2018, Babylon Village Attorney Gerard Glass sent a letter to the Lepper Family, stating, in toto, that “As you know this office is counsel to the Village of Babylon. The Court has rendered its decision. Please let me know your intentions. Thank you for your attention and courtesies herein.”
116. The day after Attorney Glass sent his letter, and two days after the Order was issued, Building Inspector Fellman stated in a letter that, “On October 17, 2018 Village Justice John Rafter found you guilty of each offense listed on various summonses you received regarding the construction of a treehouse within your front yard setback. I, as Building Inspector, am ordering the continuation of the stop work order barring any further construction or occupancy of the tree house.”
117. Building Inspector Fellman concluded his October 19, 2018 letter with the threat that the Lepper Family “must remove the tree house in its entirety or summonses may be issued on a daily basis.”
118. The threat of accruing daily fines, issued by Defendant Fellman and repeated in open court by Defendant Gerard Glass, persists to this very day.

**THE SECOND WAVE OF PROSECUTIONS AGAINST
JOHN LEPPER**

119. Rather than allow the Lepper family sufficient time to appeal or seek counsel to elapse, the Defendants, jointly and severally, individually and collectively, did work together to injure the Plaintiff Lepper family; silence the Lepper family from speaking out about community problems, and did engage in an abuse of legal process to have Mr. Lepper remove the Lepper Family Treehouse.
120. Defendant Building Inspector Fellman did issue multiple additional accusatory instruments concerning the Lepper Family Treehouse on October 31, 2018.
121. On November 5, 2018, John Lepper paid the fines imposed on him by Village Judge Rafter in his October 17th Order.
122. On November 13, 2018, the day of a hearing scheduled for trial on accusatory instruments previously issued by Building Inspector Fellman, Building Inspector Fellman created and filed a document designated “Accusatory Instrument/Information for State and Village Ordinances” asserting John Lepper “did wrongfully and unlawfully commit the offense of Section 365–26 Construction without a Permit,” followed by a recital of “§365–26 Permit Required; Materials to be submitted.”
123. Nowhere in that putative Accusatory Instrument/Information and the ordinance quoted therein is there any mention of the need for any drawing by an “architect or engineer.”
124. Nowhere in the application of Thomas C. Bruckner 99 Park Avenue, Village of Babylon, County of Suffolk, State of New York is such a requirement nor is there a requirement on any

of the treehouses/boathouses which have been allowed to exist in the Village of Babylon without permits.

125. In that putative Accusatory Instrument/Information, Building Inspector Fellman alleges that he “did observe the defendant [John Lepper] erected a treehouse without a building permit. Further after a stop work order was issued on 10/19/18 barring any further construction or occupancy of the treehouse the defendant added lights.”
126. On November 13, 2018, Village Justice John Rafter conducted a hearing on the accusatory instrument issued on October 20, 2018.
127. November 16, 2018, Plaintiff John Lepper filed a Notice of Appeal, a FOIL request, and a Litigation Hold Notice.
128. On November 20, 2018, a hearing was held before Village Justice Rafter concerning an alleged October 20th Violation and two additional from Halloween.
129. On November 20, 2018, through counsel, Mr. Lepper asked the Court to enjoin the daily issuance of fines so that Mr. Lepper may resolve the new set of accusatory instruments against him on the merits but the Hon. John T. Rafter refused to do so.
130. On November 21, 2018, John Lepper tried to obtain copies of exhibits that were missing from the trial on September 18, 2018. After waiting two hours he was denied copies.
131. On November 27, 2018, at approximately 1515 hours Plaintiff John Lepper filed a Motion to dismiss the outstanding accusatory instruments together with a letter from Attorney Morris requesting copies of the exhibits from the trial on September 18, 2018.

132. On November 27, 2018, at 8pm Mt. Lepper attended a Babylon Village Board of Trustees meeting with Joe Mineo and Nick Montalto.

COMMENCEMENT OF THE FIRST ACTION

133. On December 10, 2018, Plaintiff filed a Verified Complaint accompanied by an Order to Show Cause and the matter was heard before Hon. Joseph F. Bianco.
134. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon utilized daily fines against purported Village of Babylon Code violators to obtain compliance.
135. Defendant Gerald Glass, Esq. did represent in open Court on December 10, 2018 that the Village of Babylon intends to require building permits for any treehouse structure in the Village of Babylon.
136. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon took issue with a temporary electric extension cord to a tree on Plaintiffs' private property and sought to enjoin the use of a light that illuminated Plaintiffs American Flag and the adjoining street where illegal drug activity had taken place.



137. According to statements made by Defendant Gerald Glass in open Court on December 10, 2018, the attempts of Defendant elected officials Ralph Scordino, Mayor, Kevin Muldowney, Deputy Mayor, Robyn Silvestri, Village Trustee, Tony Davida, Village Trustee, Mary Adams, Village Trustee, to enforce Village of Babylon Code Section 365–26 was a thinly disguised effort to extort money from the Plaintiff.
138. Defendant Gerald Glass, speaking on behalf of all Defendants, did wish to enjoin Plaintiff from efforts at ameliorating the drug use that occurred on and around his property by illuminating the street.
139. Defendant Gerald Glass, on December 10, 2018 before this Honorable Court, did provide several admissions as to the true intentions of Defendants, jointly and severally, individually and collectively, to punish Plaintiffs for every day that the Lepper Family Treehouse existed.

140. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon was monitoring Plaintiffs' property.
141. Defendant Gerald Glass, Esq. did state in open Court on December 10, 2018 that the Village of Babylon was conducting surveillance of Plaintiffs' property and the family activities thereon.
142. Defendant Gerard Glass, Esq. did proceed to profit as being sued as a named Defendant along with the Village of Babylon as further discussed below.

PLAINTIFF'S APPEAL TO THE APPELLATE TERM

143. John Lepper did appeal the convictions of the lower court.
144. *People v Lepper (John)* 2019 NY Slip Op 52117(U) was decided on December 19, 2019 by the Appellate Term, Second Department (hereinafter "Appellate Term Decision") which held that "The accusatory instruments...fail to allege facts of an evidentiary nature establishing the nature of the work that defendant performed on the tree house, namely, that defendant had erected the tree house, structurally altered it or changed the use thereof...[and]... Therefore, the accusatory instruments fail to allege every element of the offense." *Id.*
145. According to a *Newsday* Article, Keldy Ortiz, *Homeowner who built treehouse serves claim against Village of Babylon*, *Newsday* (April 30, 2020), <https://nwsdy.li/3oO9VZu>, Defendant Gerard Glass "said the December decision[, Appellate Term Decision], was based on a technicality."
146. Defendant Gerard Glass stated to *Newsday*, "Babylon Village attorney Gerard Glass says the decision is no surprise

because village officials knew there was an issue in the way the summons was written, and they could not correct it after the fact.” See Deborah S. Morris, “Permit not needed for Babylon treehouse, court rules,” *Newsday* (January 2, 2020), <https://nwsdy.li/3oOa9zO>.

147. Defendant Gerard Glass admits that Defendants knew of this issue yet proceeded, not only in the prosecution but in demanding daily fines and removal/alteration of the Lepper treehouse.

148. Referring to the Appellate Term decision, Defendant Gerard Glass is quoted as stating that “This has no impact on the case whatsoever,” Glass said. “This has nothing to do with the substantive issues of the cause of why he didn’t get a building permit.” *Newsday* (January 2, 2020), <https://nwsdy.li/3oOa9zO>.

GENERAL COMPLAINTS BY THE PLAINTIFF

149. As evidenced by, among other things, the significant number of unpermitted structures in the nature of treehouses, boathouses, and play houses within the Village of Babylon, Defendants lacked probable cause for actively prosecuting John Lepper.

150. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments against Mr. Lepper in retaliation for his speaking out about matters of public concern in and around the Village of Babylon.

151. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments against Mr. Lepper to

further the wishes of some unidentified complainant and in derogation of the constitutional rights of the John Lepper and his family.

152. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments to Mr. Lepper carrying criminal sanctions without allowing Mr. Lepper the opportunity to comply with or otherwise challenge the actions of the Village of Babylon.
153. Defendants, jointly and severally, individually and collectively, through Defendant Building Inspector Fellman, did issue accusatory instruments to obtain monies and property to which Defendants were not entitled.
154. Defendants, jointly and severally, individually and collectively, knew and had reason to know that their actions were unjustified and without probable cause.
155. Defendants, jointly and severally, individually and collectively, knew and had reason to know that their actions would cause harm to and inflict distress upon the Plaintiff.
156. The Defendants, jointly and severally, individually and collectively, continue to oppress the Lepper family and cast a cloud of criminality over their persons, home, and family.
157. Among the examples of the organized oppression of the Lepper family by the Defendants, jointly and severally, individually and collectively, has been the wrongful delay and outright refusal to provide Mr. Lepper with the exhibits from his trial before Village Judge Rafter along with evidence requested, required to be produced or requested under the Freedom of Information Law.

THE BASIS FOR EQUITABLE RELIEF

158. Defendant Village of Babylon through the threats of Building Inspector Fellman continues to insist that the Lepper family tear down and completely remove their children's treehouse under threat of daily fines of up to \$1,000 each day.
159. As a result of such demands and threats, the Lepper family is in imminent danger of serious, permanent, and irreparable economic damage.
160. The Lepper family continues to live in fear that they will suffer serious economic punishment for a reasonable use of their own private property and their temerity in exercising their First Amendment rights by speaking out against the unconscionable actions of the Defendants in depriving the Lepper family of their liberty interest in raising their children as they see necessary which included trying to protect their infant children from exposure to hypodermic needles on the ground by building them a safe harbor in the air; and then retaliating against the Lepper family for speaking out.
161. John Lepper and his family has no adequate remedy at law.

DEFENDANTS FAIL TO ESTABLISH ANY CONSTITUTIONAL BASIS FOR EXERCISE OF THE "POLICE POWER"

162. Defendant Village of Babylon has not established any association between Village of Babylon Code § 365–26 and the public health, safety and welfare of the residents of the Village of Babylon.
163. There is no substantial credible evidence that the Lepper family children's treehouse represents a threat, much less a

danger, to the health, safety, and welfare of the residents of the Village of Babylon.

164. Staying enforcement of the ordinance pending the resolution of this action and a declaration of the constitutionality and enforceability of Village of Babylon Code § 365–26 will not cause any harm and/or damage to the residents of the Incorporated Village of Babylon.

DEFENDANTS USE LEGAL PROCESS, FINES AND PROSECUTION TO SILENCE JOHN LEPPER AND VIOLATE HIS FIRST AMENDMENT RIGHTS

165. Defendants have constrained the ability of John Lepper to create a treehouse for his infant children shortly after he spoke out against the criminal activity occurring within Village of Babylon.
166. Defendants have retaliated against John Leper for exercising his rights under the First Amendment.
167. Attorney Eric Tosca, representing the same Defendants in Lepper v. Village of Babylon, 18-cv-7011 tried to make an emergency application to enjoin the press from attending and John Lepper from contacting the press when it had its purported inspection of the subject premises.
168. Defendants knew and had reason to know that John Lepper intended to build a treehouse to remove their children from, and allow their children to play without, the danger of contact with hypodermic needles on the ground which had been discarded from the street and public walkways onto the Lepper property.
169. Defendants knew and had reason to know that John Lepper spoke publicly against the hypodermic needles found on his

property, crime in his community and the safety and well-being of his children.

170. In response to his identifying the problem of the hypodermic needles and their indication of a community drug problem and bringing the issues before the administration of the Village of Babylon, Defendants, individually and collectively, did conspire and act to deprive Mr. Lepper of his rights under the First, Fourth, Fifth, Eighth and Fourteen Amendment by ordering immediate and total removal of the treehouse he built for his children under the threat of continuing confiscatory fines and penalties.
171. Defendants, individually and collectively, did act to deprive John Lepper of his rights under the First, Fourth, Fifth, Eighth and Fourteen Amendments to the United States Constitution while knowing and having reason to know that Mr. Lepper fully complied with the permit process of the Village of Babylon Code, and by obfuscating an already arcane and obscure administrative process in order to cause injury to John Lepper and his family.
172. Rather than remedy the problem of drug abuse in the community or address the concerns Plaintiff John Lepper expressed about the dangers of the discarded hypodermic needles which could have been addressed by Village of Babylon Code Enforcement, Defendants accepted the building permit which Mr. Lepper filed and the fee which he tendered without any intention of processing the application or even acknowledging its existence in their later prosecution in the Babylon Village Court.
173. Upon information and belief, Defendants at the behest of an unnamed and unidentified complainant did conspire and plan

to issue accusatory instruments to Mr. Lepper with the ultimate goal of obtaining money, removing all remnants of a then unfinished treehouse, and punishing the Lepper family for exercising their constitutional rights.

174. On May 10, 2018, Defendants acknowledged that the treehouse did not violate any provision of the Village of Babylon Code by accepting the building permit application and required fee.
175. Defendants concede that notice of all three violations which were each dated in May, 2018, were actually sent to Mr. Lepper in July, 2018.
176. Defendants delayed processing the Lepper building permit for his children's treehouse and by failing to acknowledge and/or act upon the application, created a situation where fines would accrue against John Lepper for lack of a permit and cause Plaintiff John Lepper serious, permanent, and irreparable economic damage.
177. Defendants caused quasi criminal process to issue against the Lepper family to silence the Plaintiff John Lepper and violate his civil and constitutional rights.

**VILLAGE OF BABYLON CODE § 365-26 FORECLOSES
AGE-APPROPRIATE PRIVATE RIGHTS OF
ASSEMBLY AND ASSOCIATION ON ARBITRARY
GROUNDS AND ARE THEREFORE TECHNICALLY
CAPRICIOUS AS WELL AND CERTAINLY
UNDERINCLUSIVE.**

178. Plaintiff John Lepper has a constitutionally protected liberty interest in his property.
179. Plaintiff John Lepper has the right to establish a home and bring up children.

180. Plaintiff John Lepper has the right to direct the upbringing and education of his infant children.
181. Plaintiff John Lepper has the right to speak to the news/press without retaliation or fear of retaliation by the Defendants.
182. Plaintiff John Lepper has the right and duty to nurture his children and maintain the physical homestead environment in which they will grow and mature.
183. A special respect for individual liberty in the home has long been part of our culture and our law.
184. Defendants issued legal process to silence the Plaintiffs and to remove the Lepper Family Treehouse without probable cause and a proper finding that the children's treehouse would represent a danger to the public health and safety of the residents of the Village of Babylon and thereby violated the constitutional rights, due process and liberty interests of Plaintiff John Lepper without due process of law.
185. Defendants took action within the span of forty-eight hours to find Mr. Lepper guilty of a crime and then threaten daily fines if the treehouse was not removed, however, they still have not acted upon the permit application filed by John Lepper over two years ago.
186. The conviction of an unrepresented *pro se* Defendant, John Lepper, in the Babylon Village Justice Court and the unjustified fines imposed by Village Judge Rafter were an unconstitutional attempt to silence Plaintiff John Lepper and intimidate him from speaking out against government ineptitude, the scourge of drugs, and his intention to do something about it on his own property.

187. Defendants actions in the prosecution of Plaintiff John Lepper violated his civil and constitutional, his liberty rights, and his rights to due process, enjoyment of property, freedom of assembly, and the ability to associate with others on his property without the fear of government intrusion or reprisal.
188. Defendants violated the civil and constitutional rights of Plaintiff John Lepper by the unsupported citation of the Lepper Family Treehouse as an unsafe structure in violation of the International Building Code without any legal, much less equitable, basis therefore.
189. Building Inspector Fellman never presented any substantial credible evidence identifying the nature and manner he claimed the treehouse was an unsafe treehouse.

**PLAINTIFF JOHN LEPPER'S RIGHTS ARE BEING
VIOLATED BY THE THREAT OF CONTINUED FINES**

190. Village of Babylon Code § 365–26 is criminal in nature.
191. The fines associated with Village of Babylon Code § 365–26 are punitive, doubling and tripling and culminating in the demand for the removal of private property without due process.
192. The actions of Defendants in enforcing Village of Babylon Code § 365–26 against Plaintiff John Lepper and threatening to continue enforcement with successive process and escalating fines and penalties for the very same conduct violate the Constitutional Rights of the Lepper family by subjecting them to repeated double jeopardy.
193. John Lepper raised this issue before the Honorable John T. Rafter who ignored the issues, then convicted Mr. Lepper, an

unrepresented, *pro se* defendant without any substantial credible evidence of guilt or legally sufficient instrument.

194. The accrual of multiple accusatory instruments, existing unfounded convictions of three violations and pending prosecution of further accusatory instruments establishes the imminent danger of serious, permanent, and irreparable economic damage and the likelihood that such danger will be continued according to the sworn testimony of Defendant Building Inspector Fellman. As a result, Plaintiff John Lepper has been placed in jeopardy repeatedly for the same alleged criminal offense.
195. Defendants, jointly and severally, individually and collectively, had a duty not to subject Plaintiff John Lepper to constitutional violations, summary punishment, improper and inappropriate charges of Babylon Village Code violations, malicious prosecution, abuse of process, false and improper investigation.
196. Defendants, jointly and severally, individually and collectively, through their conduct, acts, and omissions acted outrageously and beyond the bounds of decency in attempting to coerce Plaintiff into removing a lawful children's treehouse from their property by threatening ongoing and continued legal proceedings with the potential for confiscatory fines and imprisonment and filing unjustified and unsupportable criminal charges against and imposing summary punishment and excessive fines upon Plaintiff for allegedly violating an unconstitutional ordinance, Village of Babylon Code §365-26; together with concealing and attempting to cover up the wrongs done to Plaintiff; and defaming, slandering and failing to redress the grievances done to the Plaintiff.

197. Defendants, jointly and severally, individually and collectively, violated the Plaintiff's rights secured under the United States Constitution and the New York State Constitution.

**PROSECUTION OF JOHN LEPPER BY THE
DEFENDANTS IS AN UNCONSTITUTIONAL TAKING
OF HIS PROPERTY**

198. Village of Babylon Code § 365–26 is unconstitutional:
199. Village of Babylon Code § 365–26 as enforced by the Defendants against the Plaintiff John Lepper is unconstitutionally vague, overbroad, and violates the civil and constitutional rights of John Lepper guaranteed under the First, Fourth, Fifth, and Fourteenth Amendment of the Constitution.
200. Village of Babylon Code § 365–26 fails to give Plaintiff John Lepper fair notice that building a treehouse of less than 90 square feet is forbidden by the Code.
201. Village of Babylon Code § 365–26 does not provide guidance to ordinary homeowners as to whether building a treehouse for their infant children might be construed as a violation subjecting them to criminal prosecution.
202. Village of Babylon Code § 365–26 encourages arbitrary and erratic arrests and convictions.
203. The accusatory instruments charging Plaintiff John Lepper with violating Village of Babylon Code § 365–26 for building a treehouse for his infant children were based upon the malice and/or animosity of a neighbor.

204. Village of Babylon Code § 365–26 fails to meet the fundamental principle of statutory construction for laws with criminal penalties by failing to set forth minimal guidelines to guide and govern law enforcement.
205. As evidenced by the Kafkaesque prosecution and continued litigation over a treehouse for the infant Lepper children on their own property, Village of Babylon Code § 365–26 allows law enforcement and local government to pursue their personal animosity in violation of the civil and constitutional rights of the Plaintiff.
206. Village of Babylon Code § 365–26 has been utilized to obtain monies from Mr. Lepper under threat of continuing fines, liens on the Lepper family home, and/or incarceration.

**THE EXCESSIVE FINES THREATED BY THE VILLAGE
OF BABYLON VIOLATE THE EIGHTH AMENDMENT**

207. Because of the criminal nature of Village of Babylon Code Section 365–26, Plaintiff John Lepper can suffer fines up to one-thousand dollars per day during the existence of his children's treehouse.
208. The Eighth Amendment of the United States Constitution protects against unreasonable and excessive fines.
209. Defendants, and specifically as stated in open Court by Gerald Glass, Esq. on December 10, 2018, intend on utilizing daily fines to enforce Village of Babylon Code § 365–26.
210. Village of Babylon Code § 365–26 can result in fines amounting to thousand(s) of dollars even though no further action was taken by the Plaintiff thereby establishing that the fines are associated with the mere existence of the children's treehouse, not its use.

211. Defendants, jointly and severally, individually and collectively, know and have reason to know that such daily fines are excessive and extortionate in nature.
212. Defendants, as stated in open Court by Defendant Gerald Glass, Esq. as Village Attorney on December 10, 2018, discussed utilizing daily fines as part of their “package of tools” to enforce Village of Babylon Code § 365–26.
213. Defendants as stated in open Court by Defendant Gerald Glass, Esq. as Village Attorney on December 10, 2018, opined that the existence of the Lepper Family Treehouse was deserving of daily fines by Defendants utilizing Village of Babylon Code § 365–26.
214. Plaintiff needs to take no further action for Defendants to issue additional daily fines.
215. According to Defendants, and specifically as stated in open Court by Defendant Gerald Glass, Esq. as Village Attorney on December 10, 2018, Defendants could simply observe and fine Plaintiff everyday he sought to defend himself in court.
216. Defendants, collectively through their attorney and agent Defendant Gerard Glass as Village Attorney, did admit in open Court on December 10, 2018 that the Village of Babylon did use exorbitant fines to obtain property, or revenue or coerce action to which Defendants are not otherwise entitled.
217. Accordingly, Plaintiffs are damaged and seek enjoinder of the enforcement of Village of Babylon Code Section 365–26.

PLAINTIFF’S “MONELL” CLAIM; 42 U.S.C. §1983

218. Plaintiff John Lepper as a resident taxpayer of the Incorporated Village of Babylon has standing individually

and, as a resident taxpayer of the Incorporated Village of Babylon, on behalf of all those other resident taxpayers of the Incorporated Village of Babylon so unfortunate as to be similarly afflicted and suffering economic damage as a result of the expenditure of Village funds for the inappropriate and improper defense of individual village officials engaged in the persecution of John Lepper for providing a treehouse in which his infant children might play.

219. Defendant elected officials, jointly and severally, individually and collectively, failed to adequately and properly train, supervise, manage, and control their employees, particularly Building Inspector Fellman, and the Defendant Village of Babylon prosecutor, Gerard Glass, in the administration of the Village of Babylon Code Section 365–26 as a result of which John Lepper has suffered injury and damage.
220. Defendant elected officials, jointly and severally, individually and collectively, were responsible for the administration and operation of the Village of Babylon.
221. Defendant elected officials, jointly and severally, individually and collectively, were responsible for policy and decision making in the Village of Babylon.
222. Defendant elected officials, jointly and severally, individually and collectively, actively established or permitted to exist a Village wide policy of denial of due process and equal protection in the administration and enforcement of the Village of Babylon Code, in this specific case Section 365–26.
223. Defendants, jointly and severally, individually and collectively, subjected Plaintiff John Lepper to selective enforcement of Village of Babylon Code Section 365–26 and

disparate treatment from that afforded similarly situated property owners.

224. Defendant elected officials, jointly and severally, individually and collectively, failed to remediate the actions taken against the John Lepper for erecting treehouse as an arboreal playhouse for his infant children and continues to harass, threaten, and attempt to coerce John Lepper into removing their children's treehouse.
225. Defendant elected officials, jointly and severally, individually and collectively, failed to remediate the actions taken against John Lepper for speaking out against criminal activity, exercising his right to dissent, appeal from the court, seek redress in a court of law and being politically active within the Village of Babylon.
226. Defendant elected officials, jointly and severally, individually and collectively, have continued to subject John Lepper to continued prosecution for alleged violations of Village of Babylon Code Section 365–26 as part of a cover up for the unjustified and improper earlier prosecution and conviction of Plaintiff John Lepper for violating Village of Babylon Code Section 365–26 by erecting a treehouse of less than 90 square feet “lot area” for his infant children.
227. Defendant elected officials, jointly and severally, individually and collectively, knew, or should have known, that there was no system or procedure in place for reporting, investigating, or remediating incidents involving harassment of Village residents by means of the Village of Babylon Code other than this litigation.
228. Defendant elected officials, jointly and severally, individually and collectively, maintained a deliberate indifference to the

human, civil, and constitutional rights of Plaintiff John Lepper.

PLAINTIFF SEEKS INJUNCTIVE RELIEF

229. Plaintiff John Lepper seeks to enjoin the daily fines and continued enforcement of Village of Babylon Code § 365–26 as against him as unconstitutional.
230. The elected officials, particularly the Village Judge, and all the employees, agents of, and consultants to the Incorporated Village of Babylon have a clear and unequivocal duty to all the resident property owners of the Village to assure them peaceful and quiet enjoyment of their homes and property according to the ancient and long standing maxim of at the heart of common law equity jurisprudence, *sic utere tuo ut alienum non laedas*, enjoining everyone to use their own property in such a way as not to injure that of another.
231. Defendant Village of Babylon seeks to limit the use of the Plaintiff's real property while it imposes no similar restriction on other property within the Village of Babylon.
232. Village of Babylon Code §326–26 can only be enforceable if it is a proper exercise of the police powers of the State by the Village of Babylon.
233. Village of Babylon Code §326–26 should be considered a zoning regulation.
234. To impose fines and even imprisonment for erecting a “building... on any lot, plot or premises” in the Village of Babylon “until a permit authorizing the same shall have been issued by the Building Inspector” (Village of Babylon Code §326–26.) without defining “building” and the phrase, “lot,

plot or premises” creates a vague, ambiguous, and essentially meaningless ordinance.

235. Each of the accusatory instruments lodged against Defendant Lepper is based on the claim that erecting a treehouse of less than 90 square feet without a building permit or variance from the Zoning Board of Appeals is a violation of the Village of Babylon Code Section 365–26.

FEDERAL & PENDENT STATE LAW CLAIMS

236. Defendants, jointly and severally, individually and collectively, had a duty not to subject Plaintiff John Lepper to constitutional violations, summary punishment, improper and inappropriate charges of Babylon Village Code violations malicious prosecution, abuse of process, false and improper investigation.
237. Defendants, jointly and severally, individually and collectively, through their conduct, acts, and omissions acted outrageously and beyond the bounds of decency in (a) attempting to coerce Plaintiffs into removing a lawful children’s treehouse from their property by threatening ongoing and continued legal proceedings with the potential for confiscatory fines and imprisonment; (b) filing unjustified and unsupportable criminal charges against and imposing summary punishment and excessive fines upon Plaintiffs for allegedly violating an unconstitutional ordinance, Village of Babylon Code Section 365–26; and (c) concealing and attempting to cover up the wrongs done to Plaintiffs; and defaming, slandering and failing to redress the grievances done to the Plaintiff.
238. Defendants, jointly and severally, individually and collectively, violated the Plaintiff’s rights secured under the

United States Constitution and the New York State Constitution.

MALICIOUS PROSECUTION

(New York and Federal Law)

239. The actions of the Defendants, jointly and severally, individually and collectively, in prosecuting John Lepper for building an elevated playhouse for his children are a perversion of proper legal procedures in violation of his personal liberty and privacy interests under the Fourth Amendment.
240. Defendants actions, as discussed above, were undertaken to punish John Lepper for speaking out against IV drug use in the Village of Babylon near his home.
241. Defendants, collectively, did act to punish John Lepper, defame John Lepper, harass and intimidate and seize John Lepper by legal process, threat of arrest and prosecution.
242. Defendants, collectively, did pay large and inappropriate fees to Defendant Gerard Glass as Village Attorney/Prosecutor to prosecute John Lepper and defend the violations of the civil and Constitutional rights of Plaintiff by the Incorporated Village of Babylon.
243. Decedent Mayor Ralph Scordino did ask the Suffolk County Police Department to arrest John Lepper without probable cause, causing the seizure of John Lepper, discussed below.
244. The actions of the Defendants, jointly and severally, individually and collectively, in prosecuting John Lepper for building an elevated playhouse for his children were initiated or continued against him, with malice and without probable cause.

EXTRA-JUDICIAL ACTIONS AGAINST JOHN LEPPER

245. Defendants, individually and collectively, did contact the Suffolk County Police Department and make false allegations seeking to have John Lepper falsely arrested and prosecuted.
246. The late mayor, Defendant Ralph Scordino, in conspiracy with others, did contact the Suffolk County Police Department to make a criminal complaint against John Lepper.
247. On February 4th 2020, Detective Brian Greenze and another Suffolk County detective from Suffolk County Police Headquarters in Yaphank arrived at the home of John Lepper's mother asking to speak to him.
248. Det. Green told John Lepper that Village of Babylon Mayor Ralph Scardino and Town of Babylon Councilman Terry McSweeney had complained that they "felt threatened" by John Lepper and that he was "following" them.
249. Defendants, individually and collectively, did make these false accusations to injure John Lepper, subject John Lepper to seizure and/or arrest and attempted to have the Suffolk County Police Department prosecute John Lepper.
250. In April 2019, Defendants conspired to send a letter to Commissioner Nigro of the FDNY further efforts to slander, defame and harm John Lepper, who is a New York City firefighter, by complaining to the FDNY that firefighter Lepper broke FDNY rules by wearing his Class-A uniform in a courtroom to gain special favoritism from the Babylon Village Justice Court and further that he committed a criminal act against the late Mayor Ralph Sciordino.

251. As a result of the conspiracy (42 U.S.C. §§ 1983, 1985 and 1986) perpetrated by and contributed to by the Defendants, jointly and severally, individually and collectively, John Lepper was forced to obtain representation from Eric Bischoff and defense by TJ McManus, Esq. of Sullivan, Block, and McGarry.
252. At the time the Defendants, jointly and severally, individually and collectively, conspired to facilitate the complaint to the FDNY they knew that John Lepper had sought a continuance of the hearing scheduled for August 14, 2018 from the afternoon session of the Court to the evening session in order for him to attend a memorial service for a brother firefighter who had died of illness from service at the 9/11 scene.
253. At the instance of Village Prosecutor Gerard Glass, Village Justice John T. Rafter denied the request and Firefighter Lepper was forced to leave the Memorial service before it was completed, in order to arrive in Court at precisely 1400 hours, but still in his Class A uniform.
254. Defendants actions were the actual and proximate cause of harm, embarrassment, accruing legal fees and other damages.

THE ROLE OF THE VILLAGE ATTORNEY

255. In response to a *Newsday* Article stating that taxpayers are “paying more than \$50,000 in legal costs associated with a backyard treehouse they didn’t help construct and can’t enjoy for themselves.” Keldy Ortiz, “Dispute over little backyard treehouse costs Babylon Village residents big bucks,” *Newsday* (September 27, 2020), <https://nwsdy.li/3lKnoQ0>, Defendant Gerard “Glass defended the cost — \$54,749 — to help the village tackle the lawsuits Lepper has filed.”

256. According to *Newsday*, Village of Babylon Records show the following monies were paid to Gerard Glass relating to a child's treehouse: Dec. 1 to Dec. 31, 2018: \$7,450; Jan. 9 to June 27, 2019: \$21,824; June 28 to Sept. 30, 2019: \$9,425; Oct. 1 to Jan. 16, 2020: \$16,050.
257. Actual malice by the Defendants against Plaintiff John Lepper is evidenced by paying Village Attorney Gerard Glass well over \$50,000.00 USD, in addition to the \$75,000.00 USD he makes as a part-time prosecutor for the Village of Babylon.
258. The American Bar Association recommends that "Prosecutors whose professional obligations are devoted full-time and exclusively to the prosecution function are preferable to part-time prosecutors who have other potentially conflicting professional responsibilities." American Bar Association, *Criminal Justice Standards for the Prosecution Function*, Fourth Edition (2017), Rule 3-2.1(a)(iii); *available at* <https://bit.ly/3oJPCwb>.
259. Indeed, "The prosecutor should not permit the prosecutor's professional judgment or obligations to be affected by the prosecutor's personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case." <https://bit.ly/3oJPCwb> at Rule 3-1.7(f)
260. Defendant Gerard Glass, Esq., as Village Attorney/Prosecutor utilized his part-time position to prosecute a child's treehouse with instruments he later admitted were legally insufficient.
261. Gerard Glass profited at the costs of taxpayers "For 72 hours and 25 minutes between Jan. 9, 2019, and June 27, 2019, the

village received a bill from Glass of \$21,725. During that time, the village received bills for various instances related to the cases with Lepper, including phone calls with village officials, a *Newsday* reporter and attending a deposition of Lepper, according to invoices.” Keldy Ortiz, “Dispute over little backyard treehouse costs Babylon Village residents big bucks,” *Newsday* (September 27, 2020), <https://nwsdy.li/3lKnoQ0>.

ABUSE OF PROCESS

(New York and Federal Law)

262. Defendant Village of Babylon employed regularly issued legal process to compel Plaintiff to remove a children’s treehouse.
263. As discussed more fully above, Defendants, jointly and severally, individually and collectively, in order to obtain a collateral objective that is outside the legitimate ends of the process did cause a series of unfounded accusatory instruments to be issued against Plaintiff John Lepper.
264. Defendants, jointly and severally, individually and collectively, intended to do harm and cause damage to Plaintiff John Lepper and his family without justification.

NEGLIGENCE

265. Defendants, jointly and severally, individually and collectively, had a duty to act reasonably and responsibly and not to act in a manner that would cause injury and/or harm or the threat of harm to the Plaintiff Lepper family.
266. Defendant Village of Babylon was negligent, careless, and reckless in the treatment of Plaintiffs by failing to train, supervise, discipline and investigate its employees involved in the instant matter.

- 267. Defendant Village of Babylon knew or should have known of its employees' propensities for the conduct which caused substantial and severe injury to the Plaintiff.
- 268. Defendants acted negligently in violating the civil, Constitutional, and human rights of the Plaintiff.

**NEGLIGENT AND/OR INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

- 269. Defendants, individually and/or collectively, jointly and/or severally, acted outrageously and beyond the bounds of decency in violating the civil rights and liberty interests of the Plaintiff causing him to suffer pain, shame, humiliation and anguish.
- 270. The reprehensible, extreme and outrageous conduct of the Defendants, jointly and severally, individually and collectively, against Plaintiffs occurred with intent and full knowledge that their conduct would cause severe and extreme emotional and psychological harm to Plaintiff.
- 271. Defendants did fail to investigate improper use of criminal process but, rather, Defendants began to conspire and cover up such actions by prosecuting criminal charges and threatening Plaintiff with unjust and excessive fines and threatened loss of their property.
- 272. The Defendants knew or had reason to know that Plaintiff John Lepper was guilty of no wrongdoing.
- 273. Defendants, jointly and severally, individually and collectively, acted with knowledge and reason to know that their conduct would cause severe and extreme emotional and physical harm to Plaintiff.

DEFAMATION

274. Plaintiff John Lepper is being harassed by the Village of Babylon and the individual defendants, to the extent that the Lepper family use of their property is being monitored and the curtilage of their property invaded without due process on what appears to be a daily basis for the purpose of attempting to fabricate charges of Babylon Village Code violations for further prosecution.
275. Defendants, individually, collectively, jointly and severally falsely accused John Lepper of breaking the law(s).
276. As a result of said defamation, Plaintiff John Lepper continue to suffer from humiliation, loss of standing in the community, loss of self-esteem and public esteem, public disgrace and severe/extreme emotional distress.

PRIMA FACIE TORT

277. Defendants, individually and/or collectively, jointly and/or severally, acted outrageously and beyond the bounds of decency in violating the civil rights and liberty interests of the Plaintiff John Lepper causing him to suffer pain, shame, humiliation and anguish.
278. The reprehensible, extreme and outrageous conduct of the Defendants, jointly and severally, individually and collectively, against Plaintiff occurred with intent and full knowledge that their conduct would cause severe and extreme emotional and psychological harm to the Plaintiff.

INJURIES AND DAMAGES

279. As a direct and proximate result of the wrongful actions and inappropriate lack of action by the Defendants, jointly and severally, individually and collectively, Plaintiff John Lepper

has suffered injury and damages, emotional and psychological harm, emotional injury, distress and pain, and incurred significant cost and expenses, including but not limited to legal fees, loss of good name and standing in the community, public stigma, personal humiliation, social degradation, and other costs and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff John Lepper seeks judgment of this honorable Court:

DECLARING that Defendants jointly and severally, individually and collectively, maliciously prosecuted Plaintiff John Lepper for allegedly violating Village of Babylon Code § 365–26.

DECLARING that the prosecution of John Lepper for allegedly violating Village of Babylon Code § 365–26 was malicious

DECLARING that the prosecution of John Lepper for violating Village of Babylon Code Section 365–26 as detailed above was malicious and a prosecution for which the Defendant Village of Babylon Prosecutor maintained a financial interest for pursuing;

DECLARING that multiple fines, duplicative and daily fines, sought to be imposed under Village of Babylon Code § 365–26 as unconstitutional and violate the Plaintiff's rights under the Fourteenth and Eighth Amendments to the United States Constitution;

DECLARING that multiple fines, duplicative and daily fines, sought to be imposed under Village of Babylon Code § 365–26 unconstitutional and unenforceable as unconstitutionally excessive;

DECLARING that Plaintiff John Lepper is a proper representative of the resident taxpayers of the Incorporated Village of Babylon for the purposes of this action.

DECLARING that the expenditure of Village funds to defend the late Mayor, the village trustees, and other village officials in this action is an improper and unlawful expenditure of Village funds.

PROHIBITING the Village of Babylon from issuing further accusatory instruments against Plaintiff charging violations of Village of Babylon Code § 365–26 for the existence of the Lepper family treehouse;

PROHIBITING the Village of Babylon from issuing accusatory instruments against other treehouses or children's play structures less than 90 square feet in floor area located within the Village of Babylon;

PROHIBITING Defendant Incorporated Village of Babylon from paying any further monies from Village funds for the payment of legal fees any attorney engaged in the personal defense of any of the individual named Defendants in this action;

APPOINTING a federal monitor to observe, monitor, and retrain the Defendants in order to assure that jointly and severally, individually and collectively, said Defendants refrain from violating the civil and Constitutional rights of the Plaintiff and all the other residents of the Incorporated Village of Babylon;

DIRECTING Defendant Incorporated Village of Babylon to immediately seek reimbursement of any and all monies paid from Village funds to any attorney for representing any of the individual named Defendants in this litigation acting as a private individual or exercising the powers of elected office;

DIRECTING restitution to the Plaintiff and all the other residents of the Incorporated Village of Babylon of all the monies expended by or on behalf of the Village in prosecuting the Plaintiff for allegedly violating Village of Babylon Code § 365–26 by erecting a treehouse to be used as a playhouse for his infant children;

AWARDING Plaintiff compensatory, general, and punitive damages, costs, disbursements, and attorneys' fees from the Defendants.

All together with such other and further relief as to this Court shall deem just and proper.

**DATED AT Melville, New York
March 4, 2021**



CORY H. MORRIS (CM 5225)

THE LAW OFFICES OF CORY H. MORRIS

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**To: ERIC TOSCA, Esq.
KELLY RODE AND KELLY
Attorneys for the Defendants
330 Old Country Road
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**GERARD GLASS, Esq.
Babylon Village Attorney
153 West Main Street
Babylon, New York 11702**

VERIFICATION

State of New York }
County of Suffolk } ss:

CORY H. MORRIS duly affirming as an attorney admitted to practice in the State of New York, deposes and says that he is the attorney for the Plaintiffs in the within action and that he has read the foregoing amended complaint and that the allegations of fact contained therein are true except as to those portions therein stated to be alleged upon information and belief, and as to those allegations he believes them to be true all based upon statements of the Plaintiffs and materials in his file.



CORY H. MORRIS

Affirmed on this fourth
day of March 2021

EXHIBIT “H”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I., and

JOHN LEPPER, individually and, as a resident
taxpayer of the Incorporated Village of Babylon, on
behalf of all those other resident taxpayers of the
Incorporated Village of Babylon so unfortunate as to
be similarly afflicted and suffering economic damage
as a result of the expenditure of Village funds for the
inappropriate and improper defense of individual
village officials engaged in the persecution of John
Lepper for providing a treehouse in which his infant
children might play,

Plaintiffs,

-against-

VILLAGE OF BABYLON;
THE ESTATE OF RALPH SCORDINO, former Mayor,
Village of Babylon, by its Legal Representative John
and/or Jane Doe; MARY ADAMS, former Village
Trustee and now Mayor; KEVIN MULDOWNNEY,
Deputy Mayor, ROBYN SILVESTRI, Village Trustee,
TONY DAVIDA, Village Trustee, STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works; GERARD
GLASS, Esq., Village of Babylon Attorney; DEBORAH
LONGO, Planning Board, Village of Babylon,

Defendants.

-----X

Index No. 2:20-cv-07011 JMA-AYS

Previously filed under
Index No. 2:18-cv-07011 and
2:21-cv-00014

JURY TRIAL DEMANDED

**DEFENDANTS' ANSWER TO
PLAINTIFFS AMENDED CONSOLIDATED VERIFIED COMPLAINT**

Defendants, VILLAGE OF BABYLON; MARY ADAMS, former Village Trustee and
now Mayor; KEVIN MULDOWNNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee,

TONY DAVIDA, Village Trustee, STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon, hereby answer the Amended Consolidated Verified Complaint of the plaintiffs, JOHN LEPPER and NOELLE LEPPER, individually and as parents and natural guardians of their infant children, B.J.L. and B.I., and JOHN LEPPER, individually and, as a resident taxpayer of the Incorporated Village of Babylon, on behalf of all those other resident taxpayers of the Incorporated Village of Babylon so unfortunate as to be similarly afflicted and suffering economic damage as a result of the expenditure of Village funds for the inappropriate and improper defense of individual village officials engaged in the persecution of John Lepper for providing a treehouse in which his infant children might play, filed in the above-captioned matter on March 4, 2021, and assert affirmative defenses as follows:

**ANSWERING EACH AND EVERY CAUSE
OF ACTION OF THE COMPLAINT**

FIRST: Denies allegations contained in paragraphs numbered "1," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "13," "14," "15," "16," "17," "18," "19," "20," "21," "22," "24," "25," "28," "31," "35," "36," "37," "38," "44," "45," "46," "47," "48," "49," "50," "51," "52," "53," "54," "55," "57," "58," "59," "60," "61," "62," "63," "64," "65," "66," "67," "68," "69," "70," "71," "72," "75," "76," "77," "78," "79," "80," "82," "83," "84," "85," "86," "88," "89," "92," "93," "95," "97," "98," "99," "100," "102," "103," "104," "105," "106," "107," "108," "110," "111," "112," "113," "118," "119," "120," "121," "122," "123," "124," "125," "134," "135," "137," "138," "139," "140," "141," "142," "145," "146," "147," "148," "149," "150," "151," "152," "153," "154," "155," "156," "157," "158," "159," "160," "161," "162," "163,"

“164,” “165,” “166,” “167,” “168,” “169,” “170,” “171,” “172,” “173,” “174,” “175,” “176,” “177,” “184,” “185,” “186,” “187,” “188,” “189,” “191,” “192,” “193,” “194,” “195,” “196,” “197,” “198,” “199,” “200,” “201,” “202,” “203,” “204,” “205,” “206,” “208,” “209,” “210,” “211,” “212,” “213,” “215,” “216,” “217,” “218,” “219,” “222,” “223,” “224,” “225,” “226,” “227,” “228,” “229,” “231,” “234,” “235,” “236,” “237,” “238,” “239,” “240,” “241,” “242,” “243,” “244,” “245,” “246,” “249,” “250,” “251,” “252,” “253,” “254,” “257,” “260,” “261,” “262,” “263,” “264,” “265,” “266,” “267,” “268,” “269,” “270,” “271,” “272,” “273,” “274,” “275,” “276,” “277,” “278” and “279” of the Amended Consolidated Verified Complaint.

SECOND: Denies each and every allegation in the form alleged contained in paragraphs numbered “32” of the Amended Consolidated Verified Complaint.

THIRD: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered “23,” “26,” “27,” “33,” “39,” “40,” “73,” “74,” “81,” “87,” “91,” “94,” “96,” “114,” “115,” “116,” “126,” “127,” “129,” “130,” “131,” “132,” “143,” “247” and “248” of the Amended Consolidated Verified Complaint.

FOURTH: Denies each and every allegation in the form alleged contained in paragraphs numbered “30,” “34,” “42,” “43,” “56,” “90,” “101,” “109,” “117,” “128,” “136,” “144,” “178,” “179,” “180,” “181,” “182,” “183,” “190,” “207,” “214,” “220,” “221,” “230,” “232,” “233,” “255,” “256,” “258,” “259,” of the Amended Consolidated Verified Complaint and refers all questions of law to the Court and all questions of fact to the trier of fact.

DEMAND FOR JURY TRIAL

FIFTH: Defendants demand a trial by jury for the non-equitable relief.

FOR A FIRST, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SIXTH: That any injuries or damages sustained by the plaintiff was occasioned through the negligence and culpable conduct on the part of the plaintiff.

FOR A SECOND, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SEVENTH: That this Court lacks jurisdiction over the person or property of the named defendants either individually or collectively, VILLAGE OF BABYLON; THE ESTATE OF RALPH SCORDINO, former Mayor, Village of Babylon, by its Legal Representative John and/or Jane Doe; MARY ADAMS, former Village Trustee and now Mayor; KEVIN MULDOWNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon, in that no proper service of process under federal law or state law was made on the defendants.

FOR A THIRD, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

EIGHTH: That the party making claim lacks capacity to bring the action. Plaintiff has no standing to sue for alleged *Monell* claims. The plaintiff has no standing to interfere with the election of any of the parties to hire counsel and has no standing to set aside or disrupt contractual undertakings by any of the defendants.

FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

NINTH: There is another action pending between the same parties for the same causes of action arising from the same facts and circumstances. Therefore, the Amended Consolidated Verified Complaint should be dismissed.

FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TENTH: That the plaintiff's Amended Consolidated Verified Complaint fails to state sufficient facts to constitute a cause of action against these defendants.

FOR A SIXTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

ELEVENTH: That this court lacks jurisdiction over the subject matter of this action inasmuch as there is no diversity of citizenship between the litigants as required by FRCP.

FOR A SEVENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWELFTH: That all or part of the action is barred by the doctrine of Collateral Estoppel or *Res Judicata*.

FOR AN EIGHTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

THIRTEENTH: The lawsuit brought by the plaintiffs is entirely without merit and is frivolous, subject to sanctions.

FOR A NINTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

FOURTEENTH: That the parties making claims failed to mitigate damages.

FOR A TENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

FIFTEENTH: The plaintiffs' claims for punitive damages are barred and are devoid of merit.

FOR AN ELEVENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SIXTEENTH: The defendants, particularly the individually named defendants, are protected under a governmental immunity from claims of negligence or any other claims made by the plaintiff in this action. Each and every defendant is immune inasmuch as they carried out a duty in their role as public servants barring the claims made herein.

FOR A TWELFTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SEVENTEENTH: These claims are not ripe for determination before the Federal Court.

FOR A THIRTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

EIGHTEENTH: The claims, especially the alleged pendant state-based claims are barred by failure to serve a timely Notice of Claim pursuant to Sections 50-e and 50-i of the General Municipal Law putting the defendants on fair notice of the claims for which recovery by the plaintiffs is sought.

FOR A FOURTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

NINETEENTH: The claims are barred by the failure of plaintiffs to attend a hearing pursuant to Section 50-h of the General Municipal Law. The plaintiff's conduct in depriving the defendants of a 50-h hearing was sanctionable.

FOR A FIFTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTIETH: Plaintiffs failed to exhaust their administrative remedies and have not completed the application for a permit and have not filed before the Zoning Board of Appeals.

FOR A SIXTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FIRST: That this action was not commenced within the applicable time limits, therefore, the Statute of Limitations constitutes a complete defense to the plaintiffs' action.

FOR A SEVENTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-SECOND: Allegations of any comments made in court are improper to allege as a basis to a lawsuit.

FOR AN EIGHTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-THIRD: "THE ESTATE OF RALPH SCORDINO" is not an entity subject to being sued.

FOR AN NINETEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FOURTH: The capacities of the defendants are misnamed in the lawsuit.

FOR A TWENTIETH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANTS RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FIFTH: That any statements made by the defendants were substantively truthful, or opinion, and constitute a complete defense to plaintiff's claims.

AS AND FOR A COUNTERCLAIM AGAINST JOHN LEPPER AND NOELLE LEPPER, THE DEFENDANTS VILLAGE OF BABYLON; THE ESTATE OF RALPH SCORDINO, FORMER MAYOR, VILLAGE OF BABYLON, BY ITS LEGAL REPRESENTATIVE JOHN AND/OR JANE DOE; MARY ADAMS, FORMER VILLAGE TRUSTEE AND NOW MAYOR; KEVIN MULDOWNNEY, DEPUTY MAYOR, ROBYN SILVESTRI, VILLAGE TRUSTEE, TONY DAVIDA, VILLAGE TRUSTEE, STEPHEN FELLMAN, VILLAGE OF BABYLON BUILDING INSPECTOR; SUZANNE SCHETTINO, DEPARTMENT OF PUBLIC WORKS; GERARD GLASS, ESQ., VILLAGE OF BABYLON ATTORNEY; AND DEBORAH LONGO, PLANNING BOARD, VILLAGE OF BABYLON,, EACH INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITY, HEREBY ALLEGE:

TWENTY-SIXTH: That if the plaintiffs B.J.L. and B.I. were caused to sustain damages at the time and place set forth in the plaintiff's Amended Consolidated Verified Complaint through any culpable conduct and/or negligence other than plaintiffs' own, and if said damages arose in whole or in part from the negligence of and/or culpable conduct of the defendants, VILLAGE OF BABYLON; THE ESTATE OF RALPH SCORDINO, former Mayor, Village of Babylon, by its Legal Representative John and/or Jane Doe; MARY ADAMS, former Village Trustee and now Mayor; KEVIN MULDOWNNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon,, each individually and in their official capacity, and if any judgment is recovered herein by the plaintiffs

B.J.L. and B.I. against the answering defendants, they will be damaged thereby and the answering defendants will be entitled to proportionate contribution and/or indemnity on the basis of the responsibility of the plaintiffs above named.

WHEREFORE, the answering defendants, VILLAGE OF BABYLON; THE ESTATE OF RALPH SCORDINO, former Mayor, Village of Babylon, by its Legal Representative John and/or Jane Doe; MARY ADAMS, former Village Trustee and now Mayor; KEVIN MULDOWNNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon,, each individually and in their official capacity, demand judgment dismissing the Amended Verified Complaint herein as to the answering defendants with costs, and further demand that the ultimate rights of the answering defendants and the plaintiffs as between themselves be determined in this action, and that the answering defendants have judgment over and against the plaintiffs for all or a part of any verdict or judgment which may be obtained herein by the plaintiffs against the answering defendants, together with costs and disbursements of this action.

Dated: Mineola, New York
May 26, 2021

Respectfully submitted,

KELLY, RODE & KELLY, LLP

BY: Laurence G. McDonnell
Laurence G. McDonnell
Attorneys for Defendants
330 Old Country Road - Suite 305
Mineola, New York 11501

(516) 739-0400

Our File No.: PDG/EPT 148530-752

TO: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road, Suite 250s
Melville, New York 11747
(631) 450-2515
Cory.H.Morris@protonmail.com

VICTOR JOHN YANNACONE, JR.
Of Counsel
(631) 475-0231
barrister@yannalaw.com

ATTORNEY VERIFICATION

Laurence G. McDonnell, an attorney duly licensed to practice law before the courts of the State of New York and of the United States District Court, Eastern District, hereby affirms the truth of the following under the penalties of perjury:

I am a duly admitted and practicing Attorney-at-Law; that I am one of the attorneys for the defendants VILLAGE OF BABYLON; MARY ADAMS, former Village Trustee and now Mayor; KEVIN MULDOWNY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; and DEBORAH LONGO, Planning Board, Village of Babylon, herein, and that I have read the foregoing ANSWER and know the contents thereof and that the same is true to my own knowledge, except as to those statements therein alleged to be upon information and belief and as to those statements, I believe it to be true.

The source of my knowledge is the contents of a file maintained in my office, which contains various reports of investigations, statements, interviews, copies of official documents, etc.

The reason this verification is not made by the defendants, is due to the fact that said defendants do not reside in the same county wherein I maintain my professional office; to wit: County of NASSAU.

Dated: Mineola, New York
May 26, 2021

Laurence G. McDonnell
Laurence G. McDonnell

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2021, I served a true copy of the foregoing Defendants' Answer to Plaintiffs' Amended Consolidated Verified Complaint by mailing same in a sealed envelope, by first class mail with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: LAW OFFICES OF CORY H. MORRIS
Attorneys for Plaintiffs
135 Pinelawn Road, Suite 250s
Melville, New York 11747
(631) 450-2515
Cory.H.Morris@protonmail.com

VICTOR JOHN YANNAcone, JR.
Of Counsel
(631) 475-0231
barrister@yannalaw.com

Laurence G. McDonnell
Laurence G. McDonnell
E-Mail: lgmcdonnell@krklaw.com

EXHIBIT “I”

ORIGINAL

1
PDG/EPT/CMG 148530-752
RECEIVED

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

JUL - 2 2019

4 -----X
5 JOHN LEPPER and NOELLE LEPPER, individually and as parents and natural guardians of
6 their infant children, B.J.L. and B.I.,

7 PLAINTIFFS,

8 -against-

Index No.
2:18-cv-07011
JFB-GRB

9 VILLAGE OF BABYLON; and, RALPH SCORDINO,
10 Mayor, KEVIN MULDOWNEY, Deputy Mayor, ROBYN
11 SILVESTRI, Village Trustee, TONY DAVIDA,
12 Village Trustee, MARY ADAMS, Village
13 Trustee; STEPHEN FELLMAN, Village of
14 Babylon Building Inspector; SUZANNE
15 SCHETTINO, Department of Public Works;
16 GERARD GLASS, Esq., Village of Babylon
17 Attorney; DEBORAH LONGO, Planning Board,
18 Village of Babylon, each individually and
19 in their official capacity, and John and/or
20 Jane Doe, unnamed, unidentified
21 complainants,

22 DEFENDANTS.

23 -----X
24
25
DATE: June 27, 2019

TIME: 11:41 A.M.

(DEPOSITION OF JOHN LEPPER.)

1

2

DATE: June 27, 2019

3

TIME: 11:41 A.M.

4

5

DEPOSITION of the Plaintiff,

6

JOHN LEPPER, taken by the Defendants,

7

pursuant to an Order, held at the offices

8

of Diamond Reporting, Inc., 150 Broadhollow

9

Road, Melville, New York 11747, before

10

Martha Trikas, a Notary Public of the State

11

of New York.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2 A P P E A R A N C E S:

3

4 LAW OFFICE OF CORY H. MORRIS
Attorney for the Plaintiffs
5 JOHN LEPPER and NOELLE LEPPER
33 Walt Whitman Road, Suite 310
6 Dix Hills, New York 11746
BY: CORY H. MORRIS, ESQ.

7

8

9 KELLY, RODE & KELLY
Attorneys for the Defendants
10 VILLAGE OF BABYLON; and, RALPH SCORDINO,
Mayor, KEVIN MULDOWNY, Deputy Mayor,
11 ROBYN SILVESTRI, Village Trustee, TONY
DAVIDA, Village Trustee, MARY ADAMS,
12 Village Trustee; STEPHEN FELLMAN, Village
Of Babylon Building Inspector; SUZANNE
13 SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
14 Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and
15 In their official capacity, and John
And/or Jane Doe
16 330 Old Country Road
Mineola, New York 11501
17 BY: ERIC P. TOSCA, ESQ.
File #: PDG/EPT 148530-752
18 Claim #: 1812820618

19

20

21

ALSO PRESENT:

22

GERARD GLASS

23

24

* * *

25

1

2 F E D E R A L S T I P U L A T I O N S

3

4

5 IT IS HEREBY STIPULATED AND AGREED by and
6 between the counsel for the respective
7 parties herein that the sealing, filing and
8 certification of the within deposition be
9 waived; that the original of the deposition
10 may be signed and sworn to by the witness
11 before anyone authorized to administer an
12 oath, with the same effect as if signed
13 before a Judge of the Court; that an
14 unsigned copy of the deposition may be used
15 with the same force and effect as if signed
16 by the witness, 30 days after service of
17 the original & 1 copy of same upon counsel
18 for the witness.

19

20 IT IS FURTHER STIPULATED AND AGREED that
21 all objections except as to form, are
22 reserved to the time of trial.

23

24

* * * *

25

1 J. LEPPER

2 J O H N L E P P E R, called as a witness,
3 having been first duly sworn by a Notary
4 Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. TOSCA:

8 Q. Please state your name for the
9 record.

10 A. John Lepper.

11 Q. What is your address?

12 A. 59 Cockenoe Avenue, Babylon,
13 New York 11702.

14 MR. TOSCA: Please mark this
15 (handing).

16 (Whereupon, the aforementioned
17 photos were marked as Defendants'
18 Exhibits A - J for identification as
19 of this date by the Reporter.)

20 MR. MORRIS: Before we begin,
21 I'd like to indicate for the record
22 that this witness is exercising his
23 right under the federal rules to
24 receive, review and correct a copy of
25 the transcript. It could be sent to

1 J. LEPPER

2 my office.

3 Also, before I guess the end of
4 the deposition, we're just going to
5 ask to confirm that the July 5th
6 depositions. And I'm also going to
7 ask you for a page extension if
8 you'll agree.

9 MR. TOSCA: I don't understand
10 what you mean by page extensions.

11 MR. MORRIS: In terms of our
12 memorandum of law and cross motion.

13 MR. TOSCA: Okay.

14 This is not something that I
15 want in the deposition transcript
16 record.

17 If you want to talk about that
18 independently, Mr. Morris, I will but
19 not here.

20 MR. MORRIS: Absolutely.

21 MR. TOSCA: As far as the
22 depositions also, as we had
23 discussed, we will commence with the
24 depositions of the defendants once
25 the plaintiffs have completed.

1 J. LEPPER

2 So assuming that we're done
3 with both plaintiffs by July 5th,
4 we'll be ready July 5th.

5 I think we've discussed this
6 already.

7 MR. MORRIS: Okay.

8 To the extent that you're
9 conditioning the production the
10 production of defendants on
11 plaintiffs, we're going to object.

12 And if we need to, we have the
13 opportunity. We should do it now
14 probably before July 5th because
15 that's the day after Independence
16 Day.

17 MR. TOSCA: To talk to the
18 magistrate.

19 MR. MORRIS: Yes, to talk to
20 the magistrate.

21 MR. TOSCA: Okay.

22 MR. MORRIS: But please begin.

23 Q. All right.

24 Are you ready?

25 A. Yes.

1 J. LEPPER

2 Q. Good morning, Mr. Lepper. My
3 name is Eric Tosca. I represent the
4 defendants in this matter.

5 I'm going to ask you some
6 questions regarding your claims. And if
7 you don't hear any of the questions I ask
8 of you, I'm going to ask you to let me know
9 because I'll repeat them for you.

10 Okay?

11 A. Sure.

12 Q. If you don't understand any of
13 the questions I ask of you, please let me
14 know that as well and I will rephrase them
15 so, hopefully, you do understand them.

16 Okay?

17 A. Sure.

18 Q. In addition, I'm going to ask
19 that all responses that you give on the
20 record be verbal because the reporter is
21 not able to take a nod of the head, you
22 know, show the dimensions with your hands
23 or something else.

24 A. I understand.

25 Q. Okay.

1 J. LEPPER

2 Mr. Lepper, what is your date
3 of birth?

4 A. [REDACTED] 1973.

5 Q. And your social security
6 number?

7 MR. MORRIS: I'm going to ask
8 that this be redacted. Only the last
9 five digits, only the birth year be
10 put on the record, please.

11 A. [REDACTED].

12 Q. You have to give me the whole
13 thing.

14 A. [REDACTED] 44553.

15 Q. And what is your marital
16 status?

17 A. Married.

18 Q. And your wife's name?

19 A. Noelle, N-O-E-L-L-E.

20 Q. And her last name is Lepper?

21 A. Yes, sir.

22 Q. What was her maiden name?

23 A. Desantis, D-E-S-A-N-T-I-S.

24 Q. What's your date of marriage?

25 A. Date of marriage was 8/22/03.

1 J. LEPPER

2 Q. '03?

3 A. Yes, sir.

4 Q. Do you have any children?

5 A. I'm sorry.

6 '08. '08.

7 MR. TOSCA: Off the record.

8 (Whereupon, an off-the-record
9 discussion was held.)

10 Q. And do you have any children?

11 A. Yes, sir.

12 Q. How many children do you have,
13 sir?

14 A. Two.

15 Q. What are their names?

16 A. B.L. is my son. Six years old.

17 Q. What is his date of birth?

18 A. [REDACTED] 2012.

19 And B.L.

20 Q. And what is her date of birth?

21 A. [REDACTED] 2013.

22 MR. MORRIS: So please note for
23 the record I ask that you redact and
24 only leave the birth year of those
25 two children, please.

1 J. LEPPER

2 permits.

3 Q. In your name?

4 A. Yes.

5 Q. Did you do any filings --

6 A. No.

7 MR. MORRIS: Objection.

8 Q. -- where you personally went
9 down to the building department?

10 MR. MORRIS: Objection.

11 You can answer.

12 A. No.

13 Q. Were you familiar with the
14 building codes at that time?

15 MR. MORRIS: Objection.

16 You can answer.

17 A. No, I wasn't.

18 Q. And at any time during the
19 construction, did you look up any building
20 codes?

21 MR. MORRIS: Objection.

22 You can answer.

23 A. No.

24 I never needed to.

25 Q. Did you receive any violations

1 J. LEPPER

2 for any of the construction that was
3 performed at that time?

4 A. No, I did not.

5 Q. At the completion of the
6 renovations, did you receive any
7 certificates for completion of the --

8 A. Yes, I did.

9 Q. -- work?
10 What certificates did you
11 receive?

12 A. A certificate of occupancy.

13 Q. For what?

14 A. Excuse me?

15 Q. For what?

16 A. Certificate of occupancy for
17 the completion of the construction, closing
18 out the permit.

19 Q. Well, were there any additions
20 you had put on the home?

21 MR. MORRIS: Objection.

22 You can answer.

23 A. Yes.

24 Q. Were all those additions
25 attached to that house?

1 J. LEPPER

2 A. The light fixture was installed

3 -- I don't know.

4 Prior to September 4th.

5 Q. September 4th of 2018?

6 A. Correct.

7 Q. Does the treehouse have any
8 other lighting?

9 A. No.

10 Q. I'm going to show you what has
11 been marked as Exhibit C and ask you to
12 identify what's depicted in that photograph
13 (handing).

14 A. (Complying.)

15 What you see there is a piece
16 of greenfield.

17 Q. Well, first off: Is this the
18 bottom of the treehouse?

19 A. Yes.

20 Q. Is that the platform to the
21 treehouse?

22 MR. MORRIS: Objection.

23 You can answer.

24 A. Yes.

25 Q. And it's surrounding or it's

1 J. LEPPER

2 around a tree, is that correct, tree trunk?

3 A. That's correct.

4 Q. Now, you said something was a
5 greenfield.

6 Could you tell me what it is
7 that you're referring to as the greenfield.

8 A. What you pointed out in the
9 picture is the greenfield (indicating).

10 Q. In other words, I guess it's a
11 metal housing for wire?

12 A. Correct.

13 Q. And who installed that metal
14 housing?

15 MR. MORRIS: Objection.

16 You can answer.

17 A. I did.

18 Q. What's inside the metal
19 housing?

20 A. An SJ code which is an
21 extension code.

22 Q. You have the light fixture.

23 Does that have a wire with a
24 plug to it?

25 MR. MORRIS: Objection.

1 J. LEPPER

2 You can answer.

3 A. No.

4 Q. Does it have any kind of cord
5 to it?

6 MR. MORRIS: Objection.

7 You can answer.

8 A. It has the SJ code which you
9 see in the picture.

10 Q. Did you attach the SJ cord to
11 the fixture?

12 A. Yes, I did.

13 Q. And how did you do that?

14 Physically, what did you do to
15 attach it?

16 A. I connected the positive wire
17 to the positive wire and the negative wire
18 to the negative wire to the box.

19 Q. I'm sorry.

20 Say that again.

21 You attached the positive wire
22 to the positive wire and the negative wire
23 to the negative wire and --

24 MR. MORRIS: Objection.

25 A. -- the ground.

1 J. LEPPER

2 Q. The ground to?

3 A. The box.

4 Q. Okay.

5 When you say you attached
6 wires, was that to the fixture itself?

7 A. Yes.

8 Q. And the SJ cord runs how long?

9 A. I don't know.

10 Q. So is the SJ cord long enough
11 without the use of any other extension
12 cords to reach the outlet on the house?

13 A. Yes.

14 Q. The outlet we're talking about
15 is attached to the house?

16 A. Correct.

17 Q. Where in the house; the back,
18 the side, inside, somewhere else?

19 A. It's on the side.

20 Q. On the side of the house.

21 On the side where Wampum is?

22 A. Yes.

23 Q. Do you know who installed that
24 outlet?

25 MR. MORRIS: Objection.

1 J. LEPPER

2 You can answer.

3 A. Yes.

4 Netron Electric.

5 MR. MORRIS: Do you know how to
6 spell that?

7 THE WITNESS: N-E-T-R-O-N.

8 Q. Did you consult with any
9 electrician for wiring the fixture?

10 MR. MORRIS: Objection.

11 You can answer.

12 A. Yes.

13 Q. Who did you consult with?

14 A. My brother.

15 Q. Is he an electrician?

16 A. Yes, he is.

17 Q. And what is his name?

18 A. Charlie Lepper.

19 Q. Did your brother help you with
20 the fixture or did you do it by yourself?

21 I mean was he there physically
22 when you did it?

23 MR. MORRIS: Objection.

24 You can answer.

25 A. I did by myself.

1 J. LEPPER

2 Q. And he told you how to do the
3 wiring?

4 A. I worked for an electrical
5 contractor.

6 Q. You said you had a brother.
7 You consulted with him.

8 Did he tell you how to do the
9 wiring?

10 MR. MORRIS: Objection.

11 You can answer.

12 A. No, I didn't. I didn't need
13 him to.

14 Q. Did he tell you what type of
15 wiring to get?

16 MR. MORRIS: Objection.

17 You can answer.

18 A. I asked him if what I bought
19 was okay.

20 Q. Where did you purchase the SJ
21 cord?

22 A. I'm not sure.

23 Q. The greenfield, where did you
24 purchase that?

25 A. I'm not sure.

1 J. LEPPER

2 I think I had it in the garage.

3 Q. Have you ever wired fixtures
4 before this time?

5 MR. MORRIS: Objection.

6 You can answer.

7 A. Yes, I have.

8 Q. About how many fixtures have
9 you wired?

10 A. I can't answer that.

11 A lot.

12 Q. Okay.

13 Now, the greenfield that we're
14 talking about, do you know what the purpose
15 of that is?

16 MR. MORRIS: Objection.

17 You can answer.

18 A. Yes, I do.

19 Q. What is the purpose?

20 A. It's an armor shielding to
21 protect it from being tampered with.

22 Q. To protect the wire from being
23 tampered with you mean?

24 A. I put it on there to protect my
25 children or anybody from touching the wire.

1 J. LEPPER

2 it's directly buried into the ground so it
3 can't be tampered with in the ground.

4 Q. How far underground did you
5 bury it?

6 A. I'm not sure.

7 Q. Did you seek to get any permits
8 before doing the electrical work?

9 MR. MORRIS: Objection.

10 You can answer.

11 A. No, I didn't.

12 Q. Do you know if any permits are
13 required for something like that?

14 MR. MORRIS: Objection.

15 You can answer.

16 A. No, I don't.

17 Q. Did you inquire?

18 A. No, I didn't.

19 Q. So the greenfield though, does
20 that go all the way under the ground up
21 until the outlet?

22 A. That's correct.

23 Q. And then does it come outside
24 up through the ground?

25 A. Yes, it does.

1 J. LEPPER

2 Q. So it's the rearmost tree of
3 the property?

4 MR. MORRIS: Objection.

5 You can answer.

6 A. Yes.

7 Q. Who decided which tree to put
8 this treehouse on?

9 A. My wife.

10 We both discussed it briefly, I
11 guess.

12 Q. And what made you determine to
13 put it on that tree?

14 MR. MORRIS: Objection.

15 You can answer.

16 A. That was the tree that was
17 closest -- it was the tree closest to what
18 was their play area in the backyard.

19 Q. The tree that you attached it
20 to before you put the treehouse on there,
21 did you do any inspection of that tree to
22 make sure that it wasn't dying or that it
23 wasn't weak or something else?

24 MR. MORRIS: Objection.

25 You can answer.

1 J. LEPPER

2 A. The trees were -- when we were
3 doing the renovation on the property and
4 the one tree was removed. The rest of the
5 trees were pruned and maintained.

6 And at that time, all the trees
7 were very healthy.

8 Q. Who told you this?

9 A. I think -- whoever removed the
10 tree.

11 Q. Do you know the company that
12 did that?

13 A. No.

14 Q. Do you have any records of the
15 company that removed the tree?

16 MR. MORRIS: Objection.

17 You can answer.

18 A. I don't believe so.

19 Q. Did you mention to him that you
20 intended to put a treehouse on one of the
21 trees?

22 MR. MORRIS: Objection.

23 You can answer.

24 A. No.

25 At that time, we had no

1 J. LEPPER

2 intention to put a treehouse in the tree.

3 Q. The material for the treehouse,
4 is that all wood?

5 A. Yes.

6 Q. Where did you get the wood to
7 make the treehouse?

8 A. Some of the wood -- most of the
9 heavy timber and the siding was reclaimed
10 from a boathouse that we -- a property we
11 owned in Amityville was damaged during
12 Sandy. And the boathouse had to be demoed,
13 demolished. And that's most of the
14 material from that.

15 Q. Before constructing this
16 treehouse, did you ever build any other
17 treehouses?

18 A. Only for myself when I was a
19 kid.

20 Q. Other than that?

21 A. No.

22 Q. By the way, do you belong to
23 any organizations regarding treehouses?

24 A. No.

25 Q. The wood that you said you had

1 J. LEPPER

2 used was from a boathouse in Amityville.

3 Was that property you owned
4 with your wife?

5 MR. MORRIS: Objection.

6 You can answer.

7 A. No.

8 My parents owned that property.

9 Q. When you say the wood was
10 reclaimed, what does that mean?

11 A. After the boathouse was
12 demolished, I asked the contractor to save
13 me certain timbers so that I can use it.

14 Q. When you asked the contractor
15 to do that, was it your intention to use
16 the wood for a treehouse at that time?

17 MR. MORRIS: Objection.

18 You can answer.

19 A. I'm not sure.

20 Q. You said the boathouse was
21 demolished.

22 Did this happen during a storm?

23 A. No.

24 Q. How did it become demolished?

25 A. It had to be removed in order

1 J. LEPPER

2 to install new bulkhead.

3 Q. And when was --

4 A. It was damaged during the
5 storm.

6 Q. It was what?

7 A. It was damaged during the
8 storm.

9 Q. The boathouse or the bulkhead
10 or both?

11 A. Both.

12 Q. You're talking about during the
13 storm.

14 You're talking about Hurricane
15 Sandy?

16 A. Correct.

17 Q. When was it that you were given
18 the wood from the boathouse?

19 A. I don't recall.

20 Q. Do you remember approximately
21 how long before you actually started
22 construction of the treehouse that you were
23 given this wood?

24 MR. MORRIS: Objection.

25 You can answer.

1 J. LEPPER

2 A. Screwdrivers.

3 Q. Did you use any scaffolding to
4 build the treehouse?

5 MR. MORRIS: Objection.

6 You can answer.

7 A. No.

8 I just used ladders.

9 Q. You said somebody helped you or
10 some people helped you hand you things; is
11 that right?

12 MR. MORRIS: Objection.

13 Objection.

14 A. Yes.

15 A few people might have handed
16 me some material.

17 Q. Did anybody do any physical
18 work on the structure itself where they
19 would attach things, put anything up?

20 MR. MORRIS: Objection.

21 You can answer.

22 A. No.

23 Q. Is the treehouse completed at
24 this point?

25 A. No.

1 J. LEPPER

2 Q. Was there anything additional
3 you wanted to do to the treehouse?

4 A. Finish?

5 Q. Yes.

6 A. Finish.

7 Q. What do you have to do to
8 finish the treehouse?

9 A. Um, I have to finish putting
10 the roof on, shutters, secure the windows
11 to make it safe for the kids to play up
12 there and install the hatch in the floor so
13 that the kids can actually access it.

14 Q. You mentioned shutters.
15 Where were the shutters going?

16 A. There's supposed to be shutters
17 on each of the windows.

18 Q. How many windows are there by
19 the way?

20 A. Three.

21 No. Five.

22 I'm sorry.

23 Q. Five?

24 A. Uh-hum.

25 Q. Is there any skylight on the

1 J. LEPPER

2 roof of the treehouse?

3 A. No.

4 Q. You said secure the windows.

5 What do you mean by secure the
6 windows?

7 How would you do that?

8 A. I was going to put -- there's
9 going to be shutters -- there's going to be
10 a plantation shutter up on the dog house
11 for ventilation, wood shutters on lower
12 windows with half inch pipe going across.
13 Probably two on each window for the kids so
14 they can be secure, can't fall out and keep
15 safe.

16 That's all.

17 Q. And the hatch you were talking
18 about, that's on the floor?

19 A. Yes.

20 Q. Is that the entryway to the
21 treehouse?

22 MR. MORRIS: Objection.

23 You can answer.

24 A. It will be. It doesn't exist
25 right now. There is no hatch.

1 J. LEPPER

2 Q. How do you get into the
3 treehouse now, if you can at all?

4 MR. MORRIS: Objection.

5 You can answer.

6 A. Only through ladder.

7 Q. Through ladder?

8 A. Ladder and a window.

9 Q. I'm not sure how the hatch
10 gives you access.

11 How would the hatch give you
12 access to the treehouse other than using a
13 ladder?

14 A. There is a ladder up the tree
15 (indicating).

16 Q. Okay.

17 A. You know, it would be ladder on
18 the tree. There's already wood that's
19 attached to the tree that the kids could
20 climb up, open the hatch and they would
21 just access the hatch through the floor.

22 Q. So the hatch actually is
23 something that once they climb the ladder,
24 go through the opening of the floor, they
25 would close the hatch so that the opening

1 J. LEPPER

2 would be closed; am I correct?

3 MR. MORRIS: Objection.

4 You can answer.

5 A. Correct.

6 Q. So when you say gain access,
7 right now you got access to the treehouse,
8 right?

9 It's just that there is no
10 hatch there; am I correct?

11 MR. MORRIS: Objection.

12 You can answer.

13 (At this time Mr. Glass exited
14 the room.)

15 A. No.

16 There is only access with the
17 ladder going through the window.

18 Q. There is only access --

19 A. There's only access if you put
20 up ladder and climb through the window.

21 Q. Well, you said there is a
22 ladder on the tree.

23 Is that what you're talking
24 about?

25 MR. MORRIS: Objection.

1 J. LEPPER

2 You can answer.

3 A. There's, you know, there's
4 pieces of wood, reclaimed 2 by 4 wood that
5 goes up the tree to where the hatch would
6 be but it does not exist right now.

7 Q. When you go up those steps --

8 A. Uh-hum.

9 Q. -- is there an opening that you
10 can go through at this point?

11 A. No.

12 Q. So the entire floor is --

13 A. Sealed.

14 Q. -- sealed?
15 Closed, right?

16 A. Yes.

17 Q. So right now if you want to get
18 into the treehouse, you have to actually
19 climb the ladder and then go through the
20 window?

21 MR. MORRIS: Objection.

22 Q. Is that what you have to do?

23 A. Yes.

24 Q. Otherwise, you have no access
25 to the treehouse.

1 J. LEPPER

2 A. Yes.

3 Q. Was there any ladder that's
4 specifically designed for the treehouse or
5 you're just using an extension ladder?

6 MR. MORRIS: Objection.

7 You can answer.

8 A. As far as the work was?

9 Q. No.

10 I guess it's a bad question.

11 Let me rephrase the question.

12 Did you build a ladder
13 specifically to get through the window of
14 the treehouse?

15 A. No.

16 Q. What type of ladder are you
17 talking about that you would use in order
18 to get access through the window of the
19 treehouse?

20 A. A fiberglass 12-foot A-frame
21 ladder.

22 Q. And do you have a fiberglass
23 A-frame ladder?

24 A. Yes.

25 But like I said, that's just

1 J. LEPPER

2 Q. Up until today.

3 A. Yes. Yes.

4 Q. When was the last time that
5 there were any other children other than
6 your own children who went up to the
7 treehouse?

8 A. Well, I recently got a new
9 neighbor and they have gone up to see the
10 treehouse. So I let them see the treehouse
11 from the ladder.

12 Q. Where is this neighbor?

13 A. Their address?

14 Q. Yes.

15 A. Directly next door on the --
16 west side of -- west side of my house.

17 Q. Are you talking about on
18 Cockenoe or Wampum?

19 A. On Cockenoe.

20 Q. So they're directly next door?

21 A. Yes.

22 Q. Do you know their names?

23 A. The children?

24 Q. No.

25 The parents.

1 J. LEPPER

2 A. Yes.

3 Q. What are their names?

4 A. [REDACTED] (phonetic).

5 Q. Sounds familiar.

6 MR. GLASS: It is familiar.

7 Can I speak to you. I'll tell
8 you right now.

9 (Whereupon, an off-the-record
10 discussion was held.)

11 Q. Do you know if Mr. is the
12 ?

13 MR. MORRIS: Let the record
14 reflect that I think your client just
15 whispered that in your ear.

16 Q. I'm sorry?

17 A. Yes.

18 Q. Do you know when they moved in?

19 A. Exactly?

20 Q. Yes.

21 A. A couple of weeks -- I'm not
22 really sure. A week ago, a couple of weeks
23 ago?

24 Q. Do you know how many children
25 they have?

1 J. LEPPER

2 A. Three.

3 Q. And you let the children up
4 into the treehouse?

5 MR. MORRIS: Objection.

6 You can answer objection.

7 A. No.

8 I let them see the treehouse.

9 I told them they were not allowed to be in
10 the treehouse so I let them look from the
11 ladder.

12 Q. The question previously was:
13 Have any other children been up in the
14 treehouse?

15 A. Till now?

16 Q. Yes.

17 A. Yes.

18 Q. Okay.

19 So the question was: When was
20 the last time any children other than your
21 own were up in the treehouse?

22 A. I don't know. I don't know.

23 Q. Okay.

24 Did you show the children the
25 treehouse?

1 J. LEPPER

2 MR. MORRIS: Objection.

3 Q. Mr. and Mrs. children.

4 A. Yes.

5 Q. Okay.

6 Did you put a ladder up for
7 them to climb up to the treehouse?

8 A. I did.

9 Q. Did they go inside the
10 treehouse?

11 A. They observed it from the
12 ladder and I did let them walk in there
13 real quick and then they came back out.

14 Q. How did they get in?

15 A. The ladder.

16 Q. All right.

17 But how did they get physically
18 into the treehouse?

19 Did they climb the ladder?

20 A. From the ladder they climbed
21 through the window.

22 Q. And did your children use it at
23 that time?

24 A. My daughter came up with me.

25 Yes.

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1 J. LEPPER

2 MR. MORRIS: Hold it right
3 there.

4 Let's take a brief break.

5 (Whereupon, a short recess was
6 taken.)

7 Q. How many children went up
8 into the treehouse?

9 A. All of them.

10 Q. Three?

11 A. Three.

12 Q. And how long were they in the
13 treehouse for?

14 A. Less on that five minutes.
15 They just wanted to see it.

16 Q. Was Mr. and Mrs. there?

17 A. Mrs. was there.

18 Q. Was Mr. there?

19 A. No.

20 Q. Was Mrs. Lepper there?

21 A. No.

22 Q. You said a couple of weeks ago.
23 But do you know the date?

24 A. No.

25 Q. Before that time, when was the

1 J. LEPPER

2 last time any children but your own were in
3 the treehouse?

4 A. Nobody's been in there.

5 Q. When was the last time that
6 your children went into the treehouse?

7 A. I don't know.

8 Q. Was it more than a month ago?

9 MR. MORRIS: Objection.

10 You can answer.

11 A. I just told you that my
12 daughter went up the ladder the same time
13 that the other kids wanted to see it
14 because the other kids were there and they
15 were just checking it out. And she went up
16 also.

17 Q. Before your daughter and the
18 children had gone up to the
19 treehouse --

20 THE WITNESS: What are you
21 looking at?

22 Q. -- did your children go up to
23 the treehouse within the month before?

24 A. Within the month before this
25 happened?

1 J. LEPPER

2 Q. Yes.

3 A. I don't recall.

4 I don't believe so.

5 MR. MORRIS: Counsel, you have
6 the defendant. He's absolutely
7 entitled to be here. He's sort of
8 staring directly at the client.

9 MR. GLASS: I'm staring at
10 whoever is speaking.

11 MR. MORRIS: It seems like
12 judging from the body language here
13 between both parties and the court
14 reporter is now laughing, it may be
15 best --

16 MR. GLASS: So is one of the
17 defendants.

18 MR. MORRIS: It may be best if
19 maybe they sit back.

20 MR. GLASS: I'm happy to do
21 that.

22 MR. TOSCA: He's allowed to
23 look.

24 MR. MORRIS: Absolutely.
25 Absolutely.

1 J. LEPPER

2 I'm not saying that.

3 MR. GLASS: Off the record.

4 I'm looking at whoever is
5 speaking.

6 MR. MORRIS: I'm looking at a
7 computer screen.

8 Just again, the proximity is
9 getting closer. And it seems that
10 body language --

11 MR. GLASS: I'll sit back if
12 that's helpful.

13 MR. MORRIS: Please.

14 MR. TOSCA: Just for the
15 record, your client was also staring
16 at my client while I was speaking to
17 him.

18 THE WITNESS: Can we move on?

19 Q. Can we go back?

20 So have you been up in the
21 treehouse, inside the treehouse in the past
22 two months?

23 A. I just told you I was up there
24 the other day.

25 Q. Before that.

1 J. LEPPER

2 A. I don't know. I don't recall.

3 Q. How about after that?

4 A. After what?

5 Q. After the children went up
6 to the treehouse.

7 A. I don't recall now.

8 Q. Had you told Mr. that you
9 had agreed to a Court Order to stay away
10 from the treehouse and not to use it?

11 MR. MORRIS: Objection.

12 You can answer.

13 A. No.

14 Q. Have you done anymore
15 renovation or building or changes to the
16 treehouse in the past two months?

17 A. No.

18 MR. MORRIS: Objection.

19 You can answer.

20 Q. Is there a name to this
21 treehouse?

22 A. What do you mean; name?

23 Q. Did you ever call it something?
24 Did you ever name it?

25 Some people name boats.

1 J. LEPPER

2 permit application.

3 Q. Okay.

4 Did anybody tell you that it
5 was issued?

6 A. No determination had been made.

7 Q. And you continued to build the
8 treehouse anyway.

9 A. No.

10 Q. Did you do something before you
11 started to build the treehouse again?

12 A. Um, I believe I waited and
13 called one more time. I waited and might
14 have called one more time until the week
15 before my son's birthday like I said on the
16 record earlier. I believe it was June 30th
17 that I just erected the walls.

18 Q. And by that time, you had not
19 gotten a permit yet, correct?

20 A. No.

21 Q. That's not correct?

22 A. No, I didn't get a permit.
23 I didn't get anything.

24 Q. And you went ahead and built it
25 anyway.

1 J. LEPPER

2 A. Um, I erected the walls to let
3 my son know on his birthday so that my son
4 could see on his birthday what dad was
5 doing in the garage so he knew what our
6 intentions was on his birthday.

7 Q. And at some point, you put a
8 roof on also.

9 MR. MORRIS: Objection.
10 You can answer.

11 A. No.

12 Q. You never put a roof on the
13 treehouse?

14 A. Yes, we did.

15 Q. Okay.

16 And when you put the roof on,
17 you knew that you didn't have a permit.

18 Am I correct?

19 MR. MORRIS: Objection.
20 You can answer.

21 A. After my meeting with Mr.
22 Fellman when he neglected his job to
23 explain to me what Building Code 365 was,
24 so I had left the building that day. And I
25 went downstairs to get a copy of the

1 J. LEPPER

2 Building Code 365-26.

3 Q. Do you have access to the
4 Internet?

5 Do you use a computer?

6 A. I do.

7 Q. Did you go on the Babylon
8 Village website?

9 MR. MORRIS: Objection.

10 At what time?

11 MR. TOSCA: Let's see.

12 Q. Before you went down to look at
13 the code, did you go on the Internet to
14 review the Babylon Village code?

15 A. No.

16 Q. Did somebody give you the
17 code --

18 MR. MORRIS: Objection.

19 You can answer.

20 Q. -- at the building department.

21 A. Not until after I received the
22 three violations.

23 Q. And how many pages did they
24 give you of the code?

25 A. They didn't give me anything.

1 J. LEPPER

2 I had to copy, photocopy I
3 guess the book. There were copies of the
4 book of Building Code 36526.

5 Q. Did you copy the entire book or
6 did you just take the pile of pages?

7 A. The entire code.

8 Q. The entire code.

9 How many pages is that?

10 A. I don't know.

11 Q. Did you know that you could
12 have gone on Internet and just accessed it
13 on the Internet?

14 A. Yes, I know that.

15 I didn't know that at the time.
16 I went to speak to Mr. Fellman in person to
17 get an explanation of what building code
18 36526 was, of what I was being violated
19 for.

20 Q. You said that outside of
21 discussing the permit and asking him what
22 the code provision was and what it meant
23 and you said he didn't tell or you or he
24 didn't explain it to you, did you speak
25 about anything else at that time?

1 J. LEPPER

2 MR. MORRIS: Objection to
3 everything except for did you speak
4 to anything else at that time.

5 A. Did we speak?

6 Yes.

7 We spoke about everything we
8 just spoke about. We spoke about the
9 violations and the code, that we
10 complained.

11 And I don't know what else.

12 Q. Well, you mentioned something
13 about a hypodermic needle previously and I
14 want to know: Did you speak to him about
15 the hypodermic needle during that
16 conversation?

17 MR. MORRIS: Objection.

18 Asked and answered.

19 A. Yes, it did come up in the
20 conversation.

21 Q. At what point in the
22 conversation did it come up?

23 A. I'm not sure.

24 It was in the conversation.

25 Probably towards -- maybe towards the end.

1 J. LEPPER

2 I don't know.

3 Q. Okay.

4 Who brought up the hypodermic
5 needle?

6 What raised the issue first?

7 A. Obviously, I did because he
8 didn't know about it.

9 Q. Okay.

10 What did you tell him?

11 MR. MORRIS: Objection.

12 You can answer.

13 A. I told him what we had found in
14 the bushes while we were playing with our
15 kids.

16 Q. I'm sorry.

17 I didn't hear you, actually.

18 Did you say just now I told him
19 why we put the treehouse up?

20 MR. MORRIS: Could we get a
21 read back, please.

22 (Whereupon, the referred to
23 answer was read back by the
24 Reporter.)

25 Q. Did you tell him why you put

1 J. LEPPER

2 the treehouse up?

3 MR. MORRIS: Note my objection.

4 You can answer.

5 A. I told him why we decided we
6 were going to put the treehouse up and what
7 we had found in our bushes.

8 Q. Okay.

9 What was the connection between
10 the two?

11 A. The connection between the two
12 is I found a hypodermic needle in my bushes
13 within arm's reach of my children. And I
14 put a lock on my gate in a place where I
15 thought I would never have to put a lock on
16 my gate and decided at some point that we
17 were going to put a treehouse so we could
18 keep our kids safe in our backyard and away
19 from what we were finding in the street or
20 the bushes or wherever else.

21 Q. Was the purpose for your
22 putting up the treehouse related to the
23 hypodermic needle you found in the bushes?

24 MR. MORRIS: Objection.

25 You can answer.

1 J. LEPPER

2 A. What's the purpose of putting?

3 Repeat that.

4 MR. TOSCA: Sure.

5 Could you repeat it.

6 (Whereupon, the referred to
7 question was read back by the
8 Reporter.)

9 MR. MORRIS: Note my objection.
10 You can answer.

11 A. That was -- it firmed it up.
12 Like I said, I don't know if we discussed
13 it prior to ever, you know, putting up a
14 treehouse.

15 But finding that needle
16 definitely was the reason why we said
17 that's what we were going to do. That's
18 what we were going to do with the wood that
19 we reclaimed from the boathouse. That was
20 the most.

21 Q. How would the treehouse resolve
22 any issues regarding a hypodermic needle
23 that you found?

24 How is that related at all?

25 A. How is it related at all?

1 J. LEPPER

2 Q. Yes.

3 A. Well, keeping my kids safe in
4 my backyard where I could actually
5 supervise them and watch them in my
6 backyard.

7 Q. Right.

8 And how is the treehouse going
9 to protect them from hypodermic needles?

10 A. Probably spend less time on the
11 street where these needles seem to be
12 frequently found. Cause I don't think
13 they're going to be found in my backyard,
14 although we did find one next to my fence.

15 Q. You found the hypodermic
16 needles on the property.

17 Am I correct?

18 A. Yes.

19 Q. And the area where you found
20 the hypodermic needle is adjacent to the
21 walkway, the side public walkway?

22 A. No, there is no side public
23 walkway.

24 I found it next to the fence.

25 Q. Okay.

1 J. LEPPER

2 When you say there is no side
3 public walkway, is there an area of the
4 ground that people walk on on Wampum
5 alongside your home?

6 MR. MORRIS: Objection.

7 You can answer.

8 A. There's grass, if that's what
9 you're referring to.

10 Q. Yes.

11 People walk on there, right?

12 A. No.

13 MR. MORRIS: Objection.

14 Q. You never saw anybody walk
15 there?

16 A. I see the dogs walk on there
17 but they typically walk in the street.

18 Q. The people walk in the street.

19 A. Yes.

20 Q. So the hypodermic needle though
21 you found was on your side of the property;
22 is that correct?

23 A. It was on my side of the
24 property?

25 Q. Yes.

1 J. LEPPER

2 A. It was on the other side of the
3 fence, you know, next to the fence post, on
4 the street side of the fence post. It's,
5 like, a chicken wire fence.

6 Q. Now I understand.

7 So the hypodermic needle that
8 you say you found was not actually on your
9 property.

10 It was on the public ground; is
11 that correct?

12 MR. MORRIS: Objection.

13 You can answer.

14 A. No.

15 Q. It's on the other side of the
16 fence.

17 MR. MORRIS: Objection.

18 A. But my fence is in my yard.
19 It's on other side of the hedge row. It's
20 my property.

21 So it was inside the hedge row
22 on the other side of the fence
23 (indicating).

24 Q. All right.

25 That's not an area that your

1 J. LEPPER

2 terms of adding any more wood, adding any
3 shingles, adding anything at all.

4 A. No.

5 MR. MORRIS: Objection.

6 THE WITNESS: Sorry.

7 Q. Have you had any discussions
8 with Ralph Scardino, the mayor of the
9 village, about the treehouse?

10 A. In person?

11 Q. Yes.

12 A. One on one?

13 Q. Yes.

14 A. No.

15 Q. Did you have any discussions
16 with Mayor Scardino by telephone one on
17 one?

18 A. No.

19 Q. Now, did you ever write to him
20 to complain about anything regarding the
21 treehouse?

22 MR. MORRIS: Objection.

23 You can answer.

24 A. No, I never wrote to the mayor
25 regarding -- I had nothing to complain

1 J. LEPPER

2 about until after the violations.

3 Q. Did you write anything about
4 the treehouse to the mayor?

5 About the violations, anything
6 that's related to the treehouse.

7 MR. MORRIS: Same objection.

8 A. No. Not personally.

9 Q. Okay.
10 Did anybody write anything to
11 the mayor on your behalf?

12 MR. MORRIS: Objection.

13 You can answer, if you know.

14 A. Did anybody write anything on
15 my behalf?

16 Q. Yes.

17 A. Yes.

18 Q. And who wrote to him on your
19 behalf?

20 A. My attorney, for one, submitted
21 the complaint and the appeal.

22 Q. Did anyone write a letter for
23 you to the mayor?

24 MR. MORRIS: Objection.

25 To the extent you know if other

1 J. LEPPER

2 people wrote letters to the mayor on
3 your behalf, you can answer.

4 A. I don't know.

5 I do know there were several
6 neighbors that supported the treehouse that
7 went and spoke to the mayor directly or
8 wrote him a letter.

9 I understand that he received
10 mail from supporters in the village
11 about -- regarding the treehouse.

12 Q. And who told you that they
13 spoke to the mayor in person?

14 MR. MORRIS: Objection.

15 You can answer.

16 A. I don't recall but there's a
17 lot of senior members from my block.

18 Q. Could you give me their names.

19 A. No. I can't tell you exactly
20 who.

21 I wasn't there when they spoke
22 to him but I know they spoke to -- they
23 knocked on the mayor's door and they spoke
24 to him about it.

25 Q. You said that they told you

1 J. LEPPER

2 this. Whose they?

3 I'd like to know the names of
4 the people you're talking about.

5 A. I have a list of people who
6 supported.

7 Who actually knocked on his
8 door?

9 I can't tell you.

10 There's about 50 people that
11 signed and supported the petition on the
12 block. I can't tell you who actually
13 knocked on his door.

14 Q. Did you prepare the petition?

15 MR. MORRIS: Objection.

16 Were you done answering that
17 previous question?

18 THE WITNESS: Yes.

19 A. Did I prepare a petition?

20 No.

21 I just -- I didn't prepare a
22 petition. I just got signatures from
23 people who showed up in the village court
24 in the 3, 4 times that we were down there.
25 And now it's the wintertime. And we had a

1 J. LEPPER

2 formal complaint in federal court.

3 So I went and got names and
4 addresses of everybody -- a whole lot of
5 people that were available, they were in
6 support or if they wanted to sign. It
7 wasn't a formal petition though.

8 Q. You said signatures.

9 So you had something that
10 people signed for you. Was it just a sheet
11 of paper?

12 A. Just a sheet of paper.

13 Q. Did you keep it?

14 A. I did.

15 Q. With all the names?

16 A. I sure did.

17 MR. TOSCA: I'm going to
18 request a copy of the sheet of paper
19 with all the names.

20 MR. MORRIS: I just ask that
21 you follow up in writing.

22 We'll take it under advisement.

23 Q. Is there more than one time
24 where people came and signed something that
25 they showed up for an event of yours?

1 J. LEPPER

2 MR. MORRIS: Objection.

3 You can answer.

4 A. I've never had an event. But
5 there was a lot of support from my block
6 and the community in the very first
7 hearing, the second and third hearing in
8 the village.

9 And they signed, like I said,
10 just a piece of paper.

11 Q. Each and every one of those
12 times?

13 A. No.

14 Q. How many?

15 A. The one time.

16 Q. Just one?

17 A. One time.

18 Cause now it was -- I don't
19 know. It was in the middle of the winter.
20 This has been going on since May. And
21 we've been in court since August. And I
22 was going around cause now we were in a
23 different court, going from village court
24 to federal court so --

25 Q. How did these people know about

1 J. LEPPER

2 the court dates that you're talking about?

3 MR. MORRIS: Objection.

4 You can answer.

5 A. Court dates?

6 Q. Yes.

7 A. From the village?

8 Q. Yes.

9 A. Most of them were people from
10 the block. You know, put a sign up.

11 Q. Who put a sign up?

12 A. I put a sign up.

13 Q. Explaining that there was going
14 to be a court date at a certain time?

15 A. Before the initial hearing on
16 August 14, 2018, I put a small sign up
17 saying support our treehouse, the date, the
18 time at the village court.

19 Q. Did you ever make an
20 application for permits for any signs you
21 put up on your property?

22 MR. MORRIS: You can answer.

23 A. No.

24 Q. The signs you're talking about,
25 they were prepared by you?

1 J. LEPPER

2 A. Yes.

3 Q. And did you ever call people
4 and tell them look. I'm going on a court
5 hearing. I'd like you to come and support
6 me.

7 MR. MORRIS: Objection.

8 You can answer.

9 A. Call them?

10 Q. Yes.

11 A. Repeat the question, please.

12 Q. Sure.

13 Did you ever telephone anyone,
14 either cell phone, landline, and tell
15 people, tell persons that you're having a
16 court date and you would like them to come
17 down?

18 A. Yes. I believe I did.

19 Q. Did you do that every time you
20 had a court date?

21 A. No.

22 Q. Were some of the people who
23 showed up at these court events, were they
24 family members?

25 A. Yes.

1 J. LEPPER

2 Q. About how many people who did
3 show up were family members?

4 MR. MORRIS: On which date?

5 A. Three?

6 Q. How many?

7 A. Maybe three.

8 MR. MORRIS: Note my objection.

9 On which date?

10 A. On which date?

11 My family wasn't there on every
12 date. Mostly relatives and neighbors. Not
13 relatives. Mostly neighbors in support
14 from the block.

15 Q. Were there any people that you
16 worked with who came down?

17 A. Yes.

18 On which date?

19 Q. The first date.

20 A. The first date?

21 Q. Yes.

22 A. No.

23 I don't think so.

24 Q. How about after that?

25 Did any people from your job

1 J. LEPPER

2 come down?

3 A. Yes.

4 Q. By the way, do you have a rank
5 in the fire department?

6 A. Yes, I do.

7 Q. What rank is that?

8 A. Pilot.

9 Q. Have you ever been subjected to
10 any disciplinary hearings in the fire
11 department?

12 MR. MORRIS: Objection.

13 You can answer.

14 A. No.

15 Q. Has there been ever any
16 investigation regarding any of your conduct
17 related to the fire department matters?

18 A. Yes, there has.

19 Q. When was that?

20 A. Just recently.

21 Q. What was that about?

22 A. An anonymous letter was
23 submitted stating that I showed up to
24 village court on August 14th wearing my
25 partial Class A uniform to my hearing.

1 J. LEPPER

2 And I believe that they said
3 that I was looking for some kind of special
4 favoritism the Court.

5 Q. Are you permitted to wear your
6 uniform to court --

7 MR. MORRIS: Objection.

8 Q. -- for non fire department
9 activities.

10 MR. MORRIS: Objection.

11 There's multiple uniforms.
12 Specify court.

13 Which one?

14 Q. Well, the uniform that you did
15 wear on August 14th, were you permitted to
16 wear that according to fire department
17 regulations?

18 A. I wasn't aware whether or not I
19 was allowed to wear my partial Class A
20 uniform.

21 But I did inform the Village of
22 Babylon and ask for an adjournment to a
23 later time and date, which I was
24 immediately denied because I had a plaque
25 dedication for a friend of mine who passed

1 J. LEPPER

2 away a year prior on August 14, 2017.

3 And the plaque dedication was
4 held in Manhattan at Marine Company 1 on
5 the west side which I was denied and I was
6 forced to leave the plaque dedication when
7 they were still speaking in order to make
8 it to the Babylon village court in my
9 partial Class A uniform; meaning, my short
10 sleeved shirt and pants.

11 Q. Now, you had mentioned though
12 that you had asked for an adjournment.

13 When ask you ask for an
14 adjournment for the August 14th hearing?

15 A. Prior to the hearing.

16 Q. When you say "prior", was that
17 by telephone or did you go in person to the
18 court and ask for an adjournment?

19 A. I'm not sure.

20 I believe it was by telephone.

21 Q. Did anybody go to the hearing
22 and ask for an adjournment on your behalf?

23 A. No.

24 I didn't have representation.

25 Q. Okay.

1 J. LEPPER

2 Were you told over the
3 telephone that they would not adjourn the
4 hearing?

5 MR. MORRIS: Objection.

6 You can answer.

7 A. Yes.

8 I believe I was denied. That's
9 why I was there on August 14th instead of
10 being at the plaque dedication where I
11 belong.

12 Q. You wound up not going to the
13 plaque dedication because you had to go to
14 court.

15 A. No.

16 I went.

17 MR. MORRIS: Objection.

18 Q. Even though you couldn't get
19 the adjournment you went?

20 A. I went.

21 Q. Did you tell the Court that you
22 were going to a plaque dedication and you'd
23 be late?

24 MR. MORRIS: Objection.

25 Answer.

1 J. LEPPER

2 A. No.

3 When I was called into the
4 clerk's office to speak to Gerry Glass, the
5 village attorney, I spoke to him and then I
6 explained to him why I was there in my
7 partial Class A uniform.

8 Q. And what did he say to you?

9 A. He didn't say anything to me.

10 He asked me about the case. He
11 told me how much he liked the treehouse
12 that he saw and he asked me what was the
13 case about and I explained to him what the
14 case was about.

15 Q. What time was the hearing, what
16 time were you supposed to be there on
17 August 14th?

18 A. 2 o'clock.

19 Q. Did you make it at 2:00?

20 A. I did.

21 Q. Knowing that you needed to be
22 at court at 2 o'clock, did you bring any
23 kind of change of clothes with you to this
24 plaque dedication?

25 MR. MORRIS: Objection.

EXHIBIT “J”

COPY

RECEIVED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

18-1433

-----X
KELLY, RODE & KELLY, LLP

JOHN LEPPER AND NOELLE LEPPER,

Plaintiffs,

- against -

Civil Action No.:
07011

VILLAGE OF BABYLON; and individually and
in their official capacity, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY, Deputy Mayor,
ROBYN SILVESTRI, Village Trustee, TONY
DAVIDA, Village Trustee, MARY ADAMS, Village
Trustee; STEPHEN FELLMAN, Village of Babylon
Building Inspector; SUZANNE SCHETTINO,
Department of Public Works; GERARD GLASS,
Esq., Village of Babylon Attorney; DEBORAH
LONGO, Planning Board, Village of Babylon,

Defendants.

-----X

72 East Main Street
Babylon, New York

July 5, 2019
10:01 a.m.

DEPOSITION of the Defendant

GERARD GLASS, before Nancy Dionisio
a Notary Public of the State of New
York.

Rich Moffett Court Reporting, Inc.
114 Old Country Road, Suite 630
Mineola, New York 11501
516-280-4664

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A Queens.

Q For what periods did you attend St. John's University?

A Well, just backtracking from law school, if I graduated law school in '85, that was a three-year period which would bring us to '82, so I would say right around 1981, '82 I graduated and I attended that school for the years -- four years prior thereto.

Q Did you receive any kind of certificate of attendance?

A Certificate of attendance? I'm unaware of that. I received a degree.

Q What degree did you receive?

A Bachelor's.

Q Did you attend any other institution aside from St. John's?

A Excuse me one second.

Sorry. The office is closed today so...

Did I attend any other educational institution other than

1
2 St. John's?

3 Q Yes.

4 A No.

5 Q Were you awarded any honors
6 for performance during your period of
7 attendance at St. John's?

8 A Yes.

9 Q What awards were those or
10 honors?

11 A It was a grade point -- I had
12 a high grade point average.

13 Q Anything else?

14 A No.

15 Q What was your grade point
16 average for which you received an award?

17 A 3.85.

18 Q Was that for one semester,
19 multiple semesters or something else?

20 A It was for my entire tenure.

21 Q Was it one award?

22 A Yes.

23 Q Were you awarded any honors
24 for performance during your period of
25 attendance at St. John's law school?

11

1

2

A No.

3

4

5

Q Have you participated in any continuing legal education, CLE programs since graduating law school?

6

A Yes.

7

8

Q What CLE programs have you attended since?

9

10

A That's too voluminous of a question to ask.

11

12

13

Q For each CLE program that you did attend, did you attend as an attendee or member of the faculty or presenter?

14

A An attendee.

15

16

Q Do you know who the sponsors of such CLE were?

17

18

19

20

21

22

A I've done so many of them that I wouldn't be able to remember -- to list them. I've been practicing law for 32 years, the CLE program probably came into effect plus or minus 15, 20 years ago.

23

24

Q Where do you take CLE programs?

25

A I take them generally

1

12

2

electronically.

3

Q Have you ever gone out of

4

town to take CLE programs?

5

A No.

6

Q To be clear, were you ever a

7

faculty member or presenter of CLE

8

program?

9

MR. TOSCA: Objection. Asked

10

and answered. You can answer, go

11

ahead.

12

A No.

13

Q What was the level of the

14

subject matter treatment at the CLE

15

programs at which you attend?

16

A I have no idea what that

17

question means.

18

Q For each CLE was there a

19

grade of CLE?

20

A Are they graded classes?

21

Q So for instance, was it

22

beginners, did you take all beginners CLE

23

program, intermediate?

24

A I've taken a wide variety of

25

CLE programs. Some of them are right

1
2 above your head (indicating) of all
3 different types and varieties; beginner,
4 intermediate to advanced.

5 Q What would the majority of
6 the programming that you've attended,
7 what category would it fall into?

8 A Advanced.

9 Q Could you describe some of
10 the advanced courses that you've
11 attended?

12 A Estate planning, zoning, debt
13 collection, real estate practices that
14 are areas that are of interest to me and
15 that I work in. Civil litigation.

16 Q Anything else?

17 A I'm sure there are others.

18 Q Those estate planning CLE
19 programs, were all those taken online?

20 A Yes. All of the class were
21 taken either online or by some electronic
22 medium.

23 Q So you've never attended an
24 estate planning program in person?

25 A I don't believe so.

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Q Have you attended a zoning CLE program in person?

A I don't believe I've taken any programs in person.

Q Have you attended any debt collection, real estate or civil litigation programs in person?

A My recollection is I have done all of them by some electronic format.

Q When you say electronic format, how is it that they would record your attendance?

A They were -- you'd have to fill out a form to certify you attended.

Q Would it require a code or something else?

A Yes.

Q All those electronic CLE program that you've taken, have you entered the code?

A Yes.

Q Have you sat through the entire program?

1

15

2

A I've listened to the entire

3

program.

4

Q And you earned credit for the

5

program, correct?

6

A Yes.

7

Q By whom are you employed at

8

the present time?

9

A I'm self-employed. I'm the

10

principal of Gerard Glass and Associates,

11

P.C.

12

Q For how long have you been

13

the principal of Gerard Glass Associates?

14

A This firm, less than two

15

years.

16

Q By whom are you employed

17

after you graduated from law school?

18

A The Suffolk County Attorney's

19

office.

20

Q Were you employed at any time

21

during any of those periods you attended

22

school after your high school graduation?

23

MR. TOSCA: Wait a minute.

24

Could you repeat that question.

25

(The reporter repeated the

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requested portion of the record.)

A Yes.

Q Where were you employed after your high school graduation?

A I had an assortment of part time type jobs.

Q Tell us the first one after high school, please.

A I was a clammer.

Q Where were you a clammer?

A Self-employed.

Q Did you hold a license to clam?

A Yes.

Q How long did you hold that position for?

A It was just, you know, intermittent-type work. We're talking about all part time jobs, typical college/high school type jobs.

Q After you were a clammer, what position did you hold after high school graduation?

A I think I did that

1
2 intermittently from time to time for a
3 little while after high school. I worked
4 in my dad's upholstery shop.

5 Q What was the upholstery shop
6 called?

7 A Baldwin Upholstery.

8 Q What was your father's name?

9 A Sherman.

10 Q Sherman Glass?

11 A Uh-hum.

12 Q How long did you work at the
13 upholstery shop?

14 A Intermittently from high
15 school until graduation from law school.

16 Q Did you hold any other
17 positions after high school?

18 A In what manner? I've held --
19 I've held a multitude of positions after
20 high school.

21 Q What were they?

22 A That question is so broad,
23 you're talking about 32 years of
24 positions I've held, from elected office
25 to appointed to boards to, you know, you

1
2 got to limit the question.

3 Q After your graduation, but
4 before attending law school, did you hold
5 any other employment?

6 A Any other employment than
7 what I've previously testified as to? I
8 don't think so.

9 Q How long did you work at the
10 Suffolk County Attorney's office for?

11 A Four months.

12 Q Who was your employer?

13 A Martin Ashare, County of
14 Suffolk, Martin Ashare was the County
15 Attorney at the time.

16 Q Can you, for the court
17 reporter, spell the last name?

18 A A-S-H-A-R-E.

19 Q How is it that you left the
20 Suffolk County Attorney's office?

21 A I was elected to the
22 legislature.

23 Q When were you elected to the
24 legislature?

25 A '85.

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Q How long did you hold that position for?

A Four years.

Q Did you do any other work while you were the legislator of Suffolk County New York?

A I was a practicing attorney.

Q In what position or role?

A Self-employed.

Q What was the name of the entity for which you worked?

A I practiced under my name, I wasn't working for an entity. It's a solo practice.

Q Did you incorporate as a solo practice?

A I did not.

Q Did you do any work, any other work, while you were legislator of Suffolk County New York?

A No.

Q At what point did your term of legislator end, in what year?

A Plus or minus 1987, '88.

1
2 Q So is it fair to say about
3 1985 to 1988 you were legislator and
4 self-employed?

5 A Yes.

6 Q After your term in the
7 legislature what position, if any, did
8 you hold?

9 A I was a managing partner of
10 Glass, Lazio and Glass.

11 Q Can you spell Lazio for the
12 reporter?

13 A L-A-Z-I-O.

14 Q What were your job duties as
15 managing partner of that firm?

16 A You know, I'm just thinking,
17 I am not sure if I was managing -- I
18 wasn't managing partner of Glass, Lazio
19 and Glass, I was a partner. I was a
20 practicing attorney and partner in the
21 firm and, you know, it was a three
22 attorney law firm that practiced
23 generally.

24 Q Who was the other Glass?

25 A Maureen Glass.

21

1

2

Q Who is Maureen Glass?

3

A My sister-in-law.

4

Q To whom is Ms. Maureen Glass

5

married?

6

MR. TOSCA: Objection. You

7

can answer.

8

A Michael Glass.

9

Q Michael Glass is your

10

brother?

11

A Correct.

12

Q How long were you partner at

13

Glass, Lazio and Glass for?

14

A Until Rick Lazio got elected

15

to the house of representatives which

16

was, I'm guessing, between -- about eight

17

years after its formation. That's a

18

guess.

19

Q Is it fair to say that you

20

started as partner of Glass, Lazio and

21

Glass around 1988?

22

A Yes.

23

Q How long were you a partner

24

at Glass, Lazio and Glass for?

25

A That entire period.

1

22

2

Q Eight years, would that bring

3

us to 1996?

4

A Plus or minus.

5

Q When you say plus or minus --

6

A You're talking about events

7

that I would need a resume to revisit. I

8

don't remember the times exactly, the

9

years. Approximate, all the dates I've

10

given you are approximate.

11

Q We will keep it as that

12

period, is that okay?

13

A I'm just telling you all the

14

dates I'm giving you are approximate

15

unless I say otherwise.

16

Q After you were partner at

17

Glass, Lazio and Glass what was the next

18

position that you held?

19

A I was the managing partner at

20

Glass and Glass which was the successor

21

firm.

22

Q Was the other Glass Maureen

23

Glass?

24

A Correct.

25

Q How long did you remain a

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partner at Glass and Glass?

A Up until about two years ago.

Q Is it fair to say about 1996
to about 2017?

A Approximately, yes.

Q About two decades?

A Yes.

Q In what areas did you
practice at Glass and Glass?

A Same, general practice.

Q When you say the same, the
same as Glass, Lazio and Glass?

A Correct.

Q After 2017, what position did
you hold after at Glass and Glass?

MR. TOSCA: After 2017 did
you say?

A I'm the principal of Gerard
Glass and Associates, P.C.

Q What was the reason for
forming Gerard Glass and Associates?

A Because Glass and Glass came
to an end.

Q Did Ms. Maureen Glass obtain

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Q Did you assist in the production of the website for Glass, Lazio and Glass?

A You know, I don't think Glass, Lazio and Glass had a website. It's back a ways.

Q When you refer to municipal clients in publication, preparing for publication articles in electronic media, what type of clients are you referring to?

A You said municipal clients.

Q Are you referring to municipal entities or are you referring to clients within a municipality or are you referring to employees within a municipality or are you referring to clients who have municipal issues but are not part of the municipality or is it something else?

A Generally it's the municipality itself and it's elected officials.

Q Do you represent others than

1
2 the municipality itself and the elected
3 officials?

4 A Well, I represent the boards
5 and agencies of municipalities, so, yes.

6 Q What about other clients
7 other than that?

8 A Yes, I'm sure I have done
9 other work in that area for other clients
10 beyond municipalities.

11 Q When you said that you
12 prepared material for publication with
13 regards to a press release to a public
14 statement, to what were you referring?

15 A You asked the question and I
16 answered that I have done it on behalf of
17 both public and private clients.

18 Q When you say "done it," are
19 you referring to press releases on behalf
20 of public and private clients in your
21 capacity as attorney?

22 A Yes.

23 MR. MORRIS: Counsel, we're
24 going to ask for production of all
25 copies of publications that were

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just mentioned here.

MR. TOSCA: We will take it under advisement and we'll request you put all requests in writing.

Q Counsel, do you maintain a website?

A Yes.

Q When did you first publish or post your website?

A I'm guessing about a year and a half or so ago.

Q Are you referring to Gerard Glass and Associates, that website?

A Yes.

Q Has your website changed since it was first posted online?

A I don't think so.

Q If it has --

A There may have been some modifications just to bring it more current in terms of years.

Q When you say modifications, to what are you referring?

A You know, if there is a

1
2 biography stating something that we have
3 done, that may have been updated.

4 Q Are you responsible for the
5 updates?

6 MR. TOSCA: Objection.

7 MR. MORRIS: Withdrawn.

8 Q Are you --

9 A I guess I'm ultimately
10 responsible for everything.

11 Q When you say "responsible for
12 everything," are you referring to the
13 content on your website?

14 A Yes.

15 Q For Gerard Glass and
16 Associates?

17 A I think that's the role of --
18 if it's your firm you're ultimately
19 responsible for it.

20 Q So is that a positive
21 response, you are responsible for that
22 content?

23 A I said yes.

24 Q Do you maintain any social
25 media accounts?

1

2

A No -- oh, I have a -- for my

3

firm?

4

Q At all. In any capacity.

5

A Maintain, no. Do I have,

6

yes.

7

Q What social media accounts do

8

you have?

9

A I have a Facebook account.

10

Q Is that Facebook account

11

still open?

12

A I don't know.

13

Q Is the account still active?

14

A I don't know.

15

Q Do you have anything other

16

than a Facebook account?

17

A No.

18

Q Counsel, you represent

19

clients in your capacity as an attorney,

20

correct?

21

A Yes.

22

Q In your capacity as attorney

23

you maintain a website, correct?

24

A Yes.

25

Q The content on that website

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is your product, right?

A When you say your product,
it's the product of my firm.

Q Correct.

A There is a website
development company that helps you
develop it.

Q Does it say on your website
Gerard Glass and Associates that you have
"big firm results?"

A I do not know.

Q As you sit here today, is
there anything that would refresh your
recollection?

A Show me the website.

MR. MORRIS: Counsel, I ask
that you please pullup the website
for Mr. Glass.

MR. TOSCA: I ask that you do
it, Counselor, I'm not going to
pullup the website and how would we
mark that.

THE WITNESS: While you're
pulling that up, can I ask for a

85

two-minute bathroom break.

MR. MORRIS: The time is
11:18.

(A short recess was taken.)

CONTINUED EXAMINATION BY

MR. MORRIS:

MR. MORRIS: Back on the
record it's 11:25.

Q Mr. Glass, I've pulled up on
a laptop a website
www.gglasslaw.com/about/. Do you
recognize what I'm showing you now?

A Yes.

Q How do you quantify "big firm
results?"

A Well, I've been practicing
law for in excess of 30 years, I've
handled matters that are -- I would
consider to be complex types of
litigations, I've been involved in a
number of decisions that are published in
the books behind you.

MR. MORRIS: Let the record

reflect the books behind me as
attorney of New York Digest and --

THE WITNESS: McKinney's.

MR. MORRIS: And McKinney's.

Q I'm sorry, Counsel, you were
saying?

A And we had some modicum of
success.

Q Does this website refresh
your recollection as to what's on your
website?

A As to that page it does.

Q The other Glass was Maureen
Glass, is that right?

A Yes.

Q What happened to Ms. Maureen
Glass?

A Nothing.

Q Why is Ms. Maureen Glass no
longer working with you as attorney?

A Because the firm dissolved.

Q Mr. Glass, have you really
handled thousands of real estate and
business cases over 32 years?

1

2

A Yes. It's actually many
thousands.

3

4

5

6

7

Q Considering if you just
handled just 1,000 cases, that would be
approximately 31 cases per year, is that
right?

8

9

A You're suggesting that I only
handled 1,000 cases?

10

11

12

Q I'm asking you, if it was
just 1,000, that would be about 31 cases
per year, is that right?

13

14

15

A I don't know. You could do
the math. I don't think you need me to
answer that question, do you, Cory?

16

17

18

19

Q In the course of your regular
professional activities as attorney are
you aware of the phrase, "cases and
controversies?"

20

21

22

A I've heard of that term.

23

24

25

Q What does that term mean to
you?

A Dispute.

Q Do you understand the word
"cases" in the context of "cases and

1 controversies?"

2 A No.

3 Q Are you aware of the source
4 of the phrase "cases and controversies?"

5 A No.

6 Q Do you claim to have handled
7 at least 32 "cases" each year over the
8 last 32 years?

9 A Oh, sure.

10 Q Did you handle --

11 A Meaning having 32 clients?

12 Q No, no, having 32 cases.

13 A I don't know what you mean
14 when you say cases.

15 Q Counsel, when you have a
16 client, do you consider that a case?

17 A I've never really thought
18 about it that way.

19 Q The point is do you consider
20 a real estate transaction a case?

21 A I don't have a feeling one
22 way or another about it.

23 Q Do you consider a real estate
24 transaction a "case and controversy?"

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A Sometimes they are controversy, but I've never really thought about it in that context.

Q Did you handle 32 cases each year you were a member of the Suffolk County legislature?

A I don't know. It's so long ago.

Q If the number of cases you handled was only 2000 over those 32 years of practice that would mean you handled at least 62 cases each year?

A If that's the math. Show me the language you're referring to about cases and controversies, is that in my website?

Q Counsel, I'm not here to answer questions. It may be.

A If you want me to answer questions involving cases and controversies and you're looking at my website I will answer the question if you show me the language, otherwise I'll tell you I don't remember.

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Q Counsel, to the extent that you've handled cases, do you consider your real estate transactions cases, for instance?

A I haven't thought about it one way or the other. I would need to think about that.

Q If somebody called you to request information and you provided that information, would you consider that a case?

A In my professional capacity? If they called for like a telephone consultation? No, I wouldn't consider it a case because I wouldn't have been retained.

Q Counsel, would you consider a case something in which you had to appear in court?

A Yes.

Q In that vein, would you consider a real estate transaction a case?

A I've answered that.

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Q Could I ask you again,
Counsel, would you consider a real estate
transaction a case?

A I've answered that.

MR. MORRIS: Your client is
not going to answer? Mr. Tosca?

MR. TOSCA: I'm not here to
be deposed, so he's answered your
question, Mr. Morris, okay.

Q Counsel, would the word
"matters" be more accurate than "cases"
when talking about the volume of your
practice?

MR. TOSCA: Objection --

A I don't --

MR. TOSCA: -- there is no
foundation to that question.

A I don't know even what you're
talking about. So if you're referencing
something that I said on my website I
would suggest you show it to me or I'm
going to say I have no idea what you're
talking about. It's completely
disjointed to ask the question that way.

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Q Counsel, did you appear in 32 cases each year when you were a legislator?

A I don't know. I've answered that question already.

Q Did you file 32 notices of appearance in court last year?

MR. TOSCA: Objection.

A Last year? Way more than that.

Q What about in 2017?

A Mr. Morris, I represent municipal clients, there could be days when I go in to a municipal Justice Court and handle 80 cases. So if you're questioning whether or not I've handled thousands of cases, you can take my municipal clients alone where I have put in notices -- represented the municipal client on the record in separate criminal proceedings in their local Justice Court and come up with far in excess of that total because it ranges from just a few cases I may go in on to many, many cases.

1
2 Q In your capacity as attorney,
3 not as village attorney of Babylon or
4 Lindenhurst or any other village, have
5 you handled over 32 cases a year?

6 MR. TOSCA: Objection.

7 A Cases meaning -- I don't know
8 the answer. Every year I don't know the
9 answer to that.

10 Q Counsel, in your capacity as
11 attorney and not as village attorney,
12 have you filed 32 notices of appears in
13 2018?

14 A I don't know.

15 Q In your capacity as attorney
16 and not as village attorney, have you
17 filed 32 notices of appearance in 2017?

18 A I don't know.

19 Q Do you know how many notices
20 of appearance you filed in your capacity
21 as attorney but not as a village attorney
22 in the past decade?

23 A I don't know how many I filed
24 in the last month.

25 Q Is it more or less --

1
2 A Because I have a busy
3 practice, Mr. Morris. I'm in court
4 regularly. You see me there from time to
5 time and I run from Village Justice Court
6 to the appellate division and it could
7 be, you know, in two different Justice
8 Courts and the appellate term twice in a
9 month. So it's just I have a very varied
10 practice and I am in court, be it
11 landlord-tenant court, District Court,
12 Supreme Court, Justice Court, you know,
13 with significant regularity.

14 Q The name of your firm is
15 Gerard Glass and Associates, who works
16 for you aside from yourself?

17 A Staff.

18 Q Who are those staff?

19 A I have Stacey Baltrusitis, I
20 have Maureen Impagaliazzo and I have
21 typically interns that work for me and
22 college students, law students, college
23 students that vary from time to time.

24 Q Is there an associate
25 attorney that works for your office?

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A There is not.

Q Is there anyone to whom you attribute the title associate that works in Gerard Glass and Associates?

A At the moment, no.

Q Has there ever been somebody with the title of associate working at Gerard Glass and Associates?

A No, but I do use, you know, per diem attorneys to assist me with the volume of work that I have.

Q Are you reviewed by Martindale-Hubbell?

A I believe I am.

Q Can you explain to me how that process works?

A It's peer rated review.

Q Can you explain to me how you were reviewed by Martindale-Hubbell, please?

A I don't know, you'd have to ask Martindale-Hubbell.

Q Did you pay any sums of money to Martindale-Hubbell?

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A I did not.

Q The 1987 Water Protection Act, is that the act which you mentioned earlier?

A Yes.

Q Could you explain your role in authorship in that 1987 Water Protection Act, please?

A I assisted in authoring the legislation.

Q What did you do?

A I assisted in authoring the legislation.

Q What was your role in authorship in that legislation?

A I took a pen and a piece of paper and I had some ideas and I worked with others and wrote the law.

Q When you say you wrote the law, could you explain the process in which you took the pen and piece of paper and what you did with the product of that result?

A I just did.

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Q You said you were part of civil litigation, that you do civil litigation, can you explain what you mean by that?

A Disputes before arbitrators and courts in the State of New York.

Q Is that exclusive of personal injury claims?

A No, I don't do personal injury work to any great degree. I do -- it does include personal injury because I do some personal injury defense or uninsured clients.

Q Have you ever tried a personal injury case to a jury verdict?

A Yes.

Q How many?

A I don't know the answer to that.

Q In your capacity as attorney of Gerard Glass and Associates what kind of services do you provide to your clients?

A The services that are

1
2 described on my website that's before
3 you. It's a general practice.

4 Q What is the
5 "state-of-the-art" technology your firm
6 employs?

7 A Well, we have the same
8 research capabilities as a large firm,
9 for 1, for 2, we are electronically as
10 current as one would want their law firm
11 to be.

12 Q Anything else?

13 A That's what comes to mind
14 immediately.

15 Q When you say research, what
16 is the service that you use for that
17 research?

18 MR. TOSCA: Objection. You
19 can answer.

20 A Westlaw among others.

21 Q What are those others?

22 A I don't know the names, but
23 we have other, you know, subscription
24 type research aids that we use from time
25 to time.

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Q When you say electronically as current as one would want, to what are you referring aside from Westlaw?

A Computer-related issues, Internet, things of that nature.

Q Can you explain what you mean by computer-related issues?

A Well, I dealt recently with an attorney that didn't accept e-mail.

Q I'm sorry, when you say as current as one would want, are you referring to having electronic mail?

A As one of many -- I would say we are electronically current.

Q Aside from electronic mail, can you explain what you mean when you say electronically current?

MR. TOSCA: Objection.

A I think it speaks for itself.

Q Is there anything aside from Westlaw and electronic mail that provides your firm with "state-of-the-art" technology?

MR. TOSCA: Objection.

100

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2 A Yes, there are other -- it's
3 not what I do, but I know that my staff
4 does and they have other software that I
5 believe that they subscribe to and
6 purchase, that is what the reference is
7 to.

8 Q What software is that?

9 A I don't know --

10 MR. TOSCA: Objection. I'm
11 going to Counsel the --

12 MR. MORRIS: I'm going to
13 move on.

14 MR. TOSCA: I'm objecting.

15 Q Counsel, are you aware that
16 on May 10, 2018 the Village of Babylon
17 building inspector Stephen Fellman sent a
18 letter to John Lepper?

19 A I'm not aware of the date.

20 Q Are you aware that such a
21 letter was sent to John Lepper?

22 A I'm aware that he sent him
23 some letter.

24 Q Are you aware that a May 10,
25 2018 letter sent by the Village of

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1 attorney, are you aware of any efforts
2 made through its elected official,
3 appointed officials or employees, to
4 preserve, maintain the human, civil and
5 constitutional rights of the Lepper
6 family?
7

8 MR. TOSCA: Objection. If
9 you want to answer you can answer.

10 A Am I aware of any --

11 MR. MORRIS: Counsel, are you
12 stating something on the record?
13 It sounded like you were speaking
14 to your client.

15 A He said you can answer it.

16 Am I aware of any --

17 THE WITNESS: Could you
18 repeat it, I'm so sorry to do this
19 to you.

20 (The reporter repeated the
21 requested portion of the record.)

22 MR. TOSCA: Objection to
23 form.

24 A Specific to the Lepper
25 family? I don't think the Lepper family

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1 was treated differently than anyone else.
2 In fact, I think that what the village
3 strives to do is apply a uniform and
4 equal approach. So I don't know that the
5 village has an obligation to go to the
6 Lepper family to explain themselves. I
7 think the Lepper family has an obligation
8 to show that, like everyone else, they
9 will comply with the law, that's why the
10 summons were issued. Because they are
11 looking to be treated differently than
12 everyone else.
13

14 MR. MORRIS: It's 3:31 let's
15 go off the record.

16 (Discussion off the record.)

17 MR. MORRIS: It's 3:43, we
18 are back on the record.

19 Q Counsel, we went through a
20 significant amount of your background as
21 an attorney. Who is R-A-U?

22 A That's my niece. She's also
23 an attorney.

24 Q Are you currently Gerard
25 Glass and Associates?

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A I am.

Q What is Glass and R-A-U?

A It's a separate firm.

Q When did you become part of
that firm?

A I'm not part of that firm.

Q Who is the Glass in Glass
and --

A The Glass that I was partners
with up until a year and three quarters
ago, a year and a half ago.

Q Is that --

A Maureen Glass.

Q Maureen Glass?

A Yes.

Q What is the first name of
R-A-U the attorney?

A Kelly.

Q What is Kelly R-A-U, Rau, her
relationship with Ms. Maureen Glass?

A She's her daughter.

Q Is Glass and Glass dissolved
now?

A Yes.

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2 Q Is it fair to say that Glass
3 and Glass was dissolved Glass and Rau
4 R-A-U was formed?

5 A Yes. And Gerard Glass and
6 Associates was formed.

7 MR. TOSCA: You don't hear
8 too many mother/daughter firms.
9 That's wonderful.

10 MR. MORRIS: We are just
11 going to reserve the right to
12 recall this witness in light of the
13 enormous amount of court rulings
14 that we are seeking, both parties.

15 Mr. Glass, you are excused.
16 I just ask that we stay on the
17 record for other matters of which
18 of course you can stay.

19 THE WITNESS: Do you want me
20 to see if I can raise Steve
21 Fellman?

22 MR. TOSCA: Yes, please.

23 MR. MORRIS: Counsel, in
24 light of today, we did make a
25 reservation to recall this witness

EXHIBIT “K”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
JOHN LEPPER and NOELLE LEPPER, individually

and as parents and natural guardians of
their infant children, B.J.L and B.I.,

Plaintiffs,

- against -

VILLAGE OF BABYLON; and, RALPH SCORDINO,
Mayor, KEVIN MULDOWNEY, Deputy Mayor, ROBYN
SILVESTRI, Village Trustee, TONY DAVIDA,
Village Trustee, MARY ADAMS, Village Trustee;
STEPHEN FELLMAN, Village of Babylon Building
Inspector; SUZANNE SCHETTINO, Department of
Public Works; GERARD GLASS, Esq., Village of
Babylon Attorney; DEBORAH LONGO, Planning
Board, Village of Babylon, each individually
and in their official capacity, and John
and/or Jane Doe, unnamed, unidentified
complainants,

Defendants.

Index No.: 2:18-cv-07011 JFB-GRB

-----x

STEPHEN FELLMAN

400 Carleton Avenue
Central Islip, New York

September 4, 2019
10:43 a.m.

John Lepper v. Village of Babylon
Fellman, Stephen - September 4, 2019

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MR. MORRIS: Time is 10:16.

S T E P H E N F E L L M A N, called as a
witness, having been duly sworn by a
Notary Public, was examined and
testified as follows:

EXAMINATION BY

MR. MORRIS:

Q. Please state your full name for
the record.

A. Stephen Fellman.

Q. What is your Address?

A. 153 West Main Street, Babylon,
New York 11702.

MR. TOSCA: Off the record.

(Whereupon, a discussion was held
off the record.)

Q. Mr. Fellman, do you know how to
tell the truth?

A. Do I know how to tell the truth,
yes.

Q. You know you're under oath today?

A. Yes.

Q. You have testified under oath,
right?

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1 STEPHEN FELLMAN

2 operating.

3 MR. TOSCA: Okay.

4 Well, I'm objecting to the use of
5 the videotape. This is not taken by --

6 MR. MORRIS: Counsel, we've
7 reached --

8 MR. TOSCA: -- different party,
9 it's not certified.

10 MR. MORRIS: We reached this
11 issue a long time ago.

12 Do you have any other objection?
13 If so, let's have the witness step out
14 of the room. You can make your
15 objections on the record.

16 MR. TOSCA: I just made my
17 objection.

18 MR. MORRIS: Anything else?

19 MR. TOSCA: No.

20 Q. Mr. Fellman, what is your date of
21 birth?

22 A. XX/XX/1957.

23 MR. TOSCA: Only the last four,
24 please.

25 Q. Did you ever hold a veterinary

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1 STEPHEN FELLMAN

2 license?

3 MR. TOSCA: Objection.

4 A. No.

5 Q. Anyone with your name hold a
6 veterinarian license to your knowledge?

7 MR. TOSCA: Objection.

8 MR. MORRIS: Ask the question
9 first, please.

10 A. I have no idea.

11 Q. Aside from the license to
12 practice architecture in New York and in
13 Massachusetts, do you have any other
14 professional license we didn't discuss?

15 MR. TOSCA: Objection to the
16 form.

17 You can answer over objection.

18 A. No.

19 Q. Are a high school graduate?

20 A. Yes.

21 Q. When did you graduate from high
22 school?

23 A. 1975.

24 Q. From what high school did you
25 graduate?

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18

1 STEPHEN FELLMAN

2 my summer vacations.

3 Q. At some point did you do anything
4 other than blueprinting for your father's
5 architecture firm?

6 A. Yes.

7 Q. What did you do?

8 A. Became the draftsman and helped
9 draw the drawings that were drawn by hand back
10 then.

11 Q. How long did you do that for?

12 A. Until he passed away.

13 Q. How long was that?

14 A. Twenty-five years ago.

15 Q. Do you remember the year that you
16 first started working for your father?

17 MR. TOSCA: Objection.

18 Asked and answered.

19 A. Again, when I was in sixth grade.

20 Q. Do you know what year that was?

21 A. I have to do the math.

22 Q. Take a minute.

23 A. I was like 13 years old.

24 Q. Was your father your boss at that
25 time?

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1 STEPHEN FELLMAN

2 A. Yes.

3 Q. Was anyone responsible for your
4 employment other than your father when you
5 were 13 years old?

6 A. No.

7 Q. What responsibilities did you
8 have for your father aside from blueprinting
9 and draftsman?

10 A. Cleaning up the office and
11 keeping everything neat, helping put together
12 sets of plans and book specifications.

13 Q. When you say plans and book
14 specifications, blueprinting, for whom did you
15 do these services?

16 A. For my father.

17 Q. Your father did those services
18 for himself or somebody else?

19 A. It was his own firm.

20 Q. Were those blueprints expected to
21 be used in structural designs by third
22 parties?

23 A. Yes.

24 Q. Were those drawings expected to
25 be used by third parties?

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20

1 STEPHEN FELLMAN

2 A. Yes.

3 Q. Were those third parties paying
4 your father for the services that you
5 rendered?

6 A. Yes.

7 Q. Were you licensed when you worked
8 for your father?

9 A. Not at 13. I was after 1983.

10 Q. When you say after 1983, so you
11 had worked for your father since you were 13,
12 correct?

13 A. Correct.

14 Q. You were not licensed until you
15 were, until 1983, correct?

16 A. Correct.

17 Q. At what time did you work for
18 your father when you were 13 years old?

19 A. I don't understand the question.

20 Q. Sure.

21 Seven days a week, 24 hours a
22 day; what times did you work for your father
23 when you were 13?

24 A. During the summer when school was
25 out, typically three days a week.

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1 STEPHEN FELLMAN

2 Q. Which three days?

3 A. I don't know, they were different
4 weekly.

5 Q. At some point did your working
6 hours change?

7 A. I went in whenever I wanted to go
8 in type of thing.

9 Q. By whom are you employed at the
10 present time?

11 A. Village of Babylon.

12 Q. Anybody else?

13 A. Village of Farmingdale.

14 Q. Anybody else?

15 A. Village of Roslyn Harbor.

16 Q. Anybody else?

17 A. That's it.

18 Q. Prior to your employment with
19 those three villages, did you maintain any
20 other employment?

21 A. I have an architectural firm.

22 Q. Do you still have an
23 architectural firm?

24 A. Yes.

25 Q. Are you employed by that

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24

1 STEPHEN FELLMAN

2 A. Roslyn Estates.

3 Q. Roslyn Estates.

4 Anything else you do for work
5 paid or unpaid?

6 A. No.

7 Q. Prior to this employment that you
8 just mentioned here, were you employed by
9 anyone else?

10 MR. TOSCA: Objection.

11 At what point in time?

12 Q. Do you understand the question?

13 A. No, because, you know --

14 I'm employed by clients, if
15 that's what you mean.

16 Q. Okay.

17 When you say employed by clients,
18 that's part of your architectural firm,
19 correct?

20 A. Yes. Yes.

21 Q. From the time you worked with
22 your father, did you have any other jobs at
23 13, what was the next job you had aside from
24 working --

25 A. I did some bartending during

John Lepper v. Village of Babylon
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1 STEPHEN FELLMAN

2 college.

3 Q. Where did you bartend?

4 A. Place called the Nightclub in
5 Hicksville.

6 Q. Any or jobs aside form working at
7 the Nightclub in Hicksville?

8 A. Bartending in another place.
9 What the heck was the name of it? It's a
10 nightclub. It was another place on 110, I
11 can't remember the name of it now.

12 I bartended for a year or two.

13 Q. Aside from bartending at the
14 Nightclub in Hicksville and the other club it
15 seems you mentioned was 110, and working for
16 your father, anything else you have done prior
17 to these seven jobs here you mentioned?

18 A. No.

19 Q. You worked for your father's
20 architectural firm until he passed away; is
21 that correct?

22 A. Correct.

23 Q. During that time, you bartended
24 as well; is that correct?

25 A. There were a couple years of

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1 STEPHEN FELLMAN

2 overlap, maybe three years overlap.

3 Q. Any other jobs overlap like those
4 bartending jobs for those years?

5 A. No.

6 Q. How long have you worked for the
7 Village of Babylon for?

8 A. I think 26 years, 27.

9 Q. What position do you maintain at
10 the Village of Babylon?

11 A. Building inspector.

12 Q. How long have you maintained that
13 position?

14 A. The entire time.

15 Q. Is that a full-time or a
16 part-time position?

17 A. Part-time.

18 Q. What are the hours worked?

19 A. Hours, I work there Tuesday,
20 Wednesday, and Friday 1:00 to 5:00.

21 Q. How much are you being paid?

22 MR. TOSCA: Objection.

23 You can answer.

24 A. \$50 an hour.

25 Q. By whom do you answer at the

John Lepper v. Village of Babylon
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1 STEPHEN FELLMAN

2 Village of Babylon?

3 A. Everybody feels like.

4 Specifically the mayor and four trustees.

5 Q. For Farmingdale, what is the
6 position you maintain at Farmingdale?

7 A. Superintendent of buildings and
8 grounds.

9 Q. How long are have you maintained
10 that position?

11 A. Nine years.

12 Q. By whom are you employed?

13 MR. TOSCA: Objection.

14 A. The Village of Farmingdale.

15 Q. To who do you answer at the
16 Village of Farmingdale?

17 A. Same, the mayor and four
18 trustees.

19 Q. Is that a full-time or part-time
20 position?

21 A. Part-time.

22 Q. How much are you being paid?

23 A. \$57 an hour.

24 Q. How many hour do you work for
25 Farmingdale?

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1 STEPHEN FELLMAN

2 MR. MORRIS: That's not a proper
3 grounds for objection.

4 MR. TOSCA: You asked him
5 multiple questions --

6 MR. MORRIS: Counsel --

7 MR. TOSCA: -- answer.

8 MR. MORRIS: This is not your
9 deposition.

10 MR. TOSCA: That is correct.

11 MR. MORRIS: If there is any
12 problem, we can go upstairs.

13 MR. TOSCA: Okay.

14 Q. Do you understand what a website
15 is?

16 A. Yes.

17 Q. Do you go on the internet?

18 A. Yes.

19 Q. Do you use internet?

20 A. Yes.

21 Q. You understand there's these
22 websites, web pages, right, and people put
23 content on these pages?

24 A. Yes.

25 Q. And you have a website?

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1 STEPHEN FELLMAN

2 A. Yes.

3 Q. Who puts the content on your
4 website?

5 A. Melissa.

6 Q. Are you responsible for the
7 content that Melissa posts?

8 MR. TOSCA: Objection.

9 A. Yes.

10 MR. TOSCA: He gave an answer to
11 that question.

12 A. Are you responsible for the
13 maintenance of that website?

14 MR. TOSCA: Objection.

15 You can answer.

16 A. Melissa is responsible, I
17 delegate to her.

18 Q. What about the website's
19 accessibility, are you responsible for that?

20 MR. TOSCA: Objection.

21 You can answer over objection.

22 A. I don't know what you mean by the
23 question.

24 Q. Sure.

25 Are you familiar with the

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1 STEPHEN FELLMAN

2 Americans with Disabilities Act?

3 A. Yes.

4 Q. Are familiar that compliance is
5 required in certain buildings for the
6 Americans with Disabilities Act?

7 A. Yes.

8 Q. Are you familiar that there's
9 compliance to be had on the internet for
10 websites pursuant to the Americans with
11 Disabilities Act?

12 MR. TOSCA: Objection.

13 You can answer.

14 A. Okay.

15 Q. Are you familiar?

16 A. Not that familiar.

17 Q. Are you responsible for
18 maintaining the compliance with the Americans
19 with Disabilities Act?

20 A. Yes.

21 MR. TOSCA: Objection.

22 RL Q. The same thing for your building,
23 you're responsible for maintaining
24 your building's --

25 MR. TOSCA: Objection.

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1 STEPHEN FELLMAN

2 MR. MORRIS: Counsel, are you
3 confused about this process at all?

4 MR. TOSCA: I'm confused by your
5 question. I'm not confused by the
6 process --

7 MR. MORRIS: This is my
8 deposition.

9 MR. TOSCA: -- I know the
10 process.

11 MR. MORRIS: This is my
12 deposition --

13 MR. TOSCA: I've asked --

14 MR. MORRIS: Counsel, stop and if
15 you can't, we'll go --

16 MR. TOSCA: I will not stop.

17 MR. MORRIS: I'm going to ask
18 that you remove yourself, please. We're
19 going to have to call the court.

20 (Witness leaves the room.)

21 We're staying on the record,
22 please.

23 (A phone call was placed to Judge
24 Brown's chambers.)

25 LAW CLERK: Good morning, Judge

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1 STEPHEN FELLMAN

2 Brown's chambers.

3 MR. MORRIS: This is attorney
4 Cory Morris. I'm conducting a
5 deposition in the matter of Lepper
6 versus Village of Babylon. We are on
7 the record, we are in the courthouse.

8 I'm having an issue here where
9 counsel keeps on interjecting, telling
10 the witness not to answer questions
11 without asserting privilege. I've
12 instructed the witness to leave. I'm
13 making this call now to either seek a
14 ruling or seek the supervision of the
15 Court in conducting the rest of this
16 deposition, please.

17 LAW CLERK: Do we have both
18 counsel on the line?

19 MR. TOSCA: I am here, yes.

20 MR. MORRIS: Eric Tosca is here,
21 yes.

22 LAW CLERK: Just to hear, what is
23 the objection, if it's a non-privilege
24 objection, is there a badgering issue?

25 MR. TOSCA: There is both a

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STEPHEN FELLMAN

badgering issue and the question is palpably improper.

The question was, and we're far afield of the issues in this case, but the witness, Mr. Fellman is being questioned, one, about a website whether it complies with the Americans with Disabilities Act, so that really is badgering because it bears absolutely no relation to this case, number 1, so the form of, the question is palpably improper in the first place.

The second place though, he then asked are you responsible for your building's compliance with the Americans for Disability Act. The witness has already testified that he rents, or that his business rents an office in a building, so I ask what building are you talking about and that's when Mr. Morris kind of flew off the handle. What building is he talking about, the question is so improper in form and substance that regardless of the

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1 STEPHEN FELLMAN

2 privilege, it boggles my mind as to what
3 the question means, so he can't ask the
4 palpably improper question and he can't
5 repeat questions when he's already given
6 an answer, so that is badgering the
7 witness, and the question is so improper
8 in form that I believe it should be
9 stricken.

10 MR. MORRIS: This is --

11 LAW CLERK: Mr. Morris, I'll see
12 if I can grab the judge. I want to let
13 you know, the judge is busy with a
14 settlement conference this afternoon.
15 I'm not sure he's going to have time to
16 resolve this. So this may be something
17 you can work out on your own. Again, if
18 the settlement conference takes long, he
19 may not have much time to come out here
20 and hear any of this.

21 Mr. Morris, is this something you
22 can move on from and make a note on the
23 record and circle back to later.

24 MR. MORRIS: Let me first, I've
25 tried to do that and counsel continues

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STEPHEN FELLMAN

to speak, literally to the point where I said, we could swear him in and he can start giving testimony if he'd like to do that. I asked if he put content on a website to which there was many speaking objections. There's no assertion of privilege.

I'm at the point where to continue this deposition, I might as well swear in counsel because he continues to testify. I'm trying to get through the deposition. If counsel will limit objection to just that. He's instructing the witness not to answer without giving the grounds therefore. If we can put that on the record, as inappropriate as it may be, I can move on here.

MR. TOSCA: Despite -- May I speak, I'm sorry.

LAW CLERK: My position is, that may be the best course of action to take at this point.

Just so I'm clear, I believe you

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1 STEPHEN FELLMAN

2 actually have a conference with Judge
3 Brown this afternoon, correct?

4 MR. MORRIS: We do.

5 LAW CLERK: Okay.

6 I believe seeing if you can have
7 objections put on the record and try to
8 continue as best you can, I'll see if I
9 can get Judge Brown, but I don't believe
10 he going to be able to handle this
11 morning, it may be able to be raised
12 this afternoon, if it's something you
13 cannot take care of at the deposition.

14 MR. TOSCA: May I be heard for
15 just one moment? This is Eric Tosca on
16 behalf of defendant.

17 Despite Mr. Morris' unfounded
18 accusations regarding my objections,
19 when Mr. Morris asked me what my
20 objection was, I told him and then he
21 calls it a speaking objection. He's
22 asked me, so that's why I told him,
23 that's 1.

24 Two is, I have objection, I've
25 let the client answer. We have gotten

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1 STEPHEN FELLMAN

2 to a point where this questioning now
3 has become harassment and not legitimate
4 questions concerning the issues in this
5 case, that's number 1.

6 Number 2 though is, the question
7 is palpably improper in its form. I
8 don't believe that that's something that
9 witness would have to answer, and that
10 is why I directed the witness not to
11 answer the last question that was asked.

12 Since it's unfounded, a question
13 based on unfounded information.

14 LAW CLERK: Okay. Hold on one
15 moment, let me put you on a brief hold.
16 I'll see if the judge is available.
17 Again, I'm not sure if I can get him.

18 Hello, folks.

19 MR. TOSCA: Good morning, your
20 Honor.

21 LAW CLERK: This is Dan, the
22 judge's law clerk. I'm sorry, the judge
23 is unavailable at the moment, he's still
24 out in the courtroom and it looks like
25 he's going to be for the foreseeable

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STEPHEN FELLMAN

future. Since you both have a conference with him this afternoon, I think you -- I'll remind you under local rules, counsel has to be cooperative for discovery including depositions. I understand that you have to advocate for your client, but this is something you'll have to try to move on or try to note the objections on the record, and if something does persist and there are issues, you can raise them with the judge this afternoon at the conference.

MR. MORRIS: Absolutely.

This is Cory Morris for the plaintiff.

I'm fine with that as long as counsel will note his objection which he is doing, as long as there is no speaking objection that follows or long diatribe, and if he's got a basis for stating why the witness should not answer, I ask that he do that. Provided those things occur, I think we can move on here.

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1 STEPHEN FELLMAN

2 MR. TOSCA: If I may, counsel for
3 the defendants, the questions that are
4 being asked are, at least, at the time
5 we objected are improper form and can't
6 be answered in the form that counsel is
7 putting the questions.

8 To the extent that this question
9 is palpably improper, I'm going to
10 object. To the extent that the
11 Mr. Morris is asking me what my
12 objection is, I believe I should be
13 speaking, how else am I going to answer
14 his question.

15 MR. MORRIS: The
16 mischaracterization is clear here. When
17 he says not to answer, I ask what's the
18 basis, and then a long diatribe as
19 opposed to privilege comes from defense
20 counsel's mouth. I'm asking that he
21 limit it to the basis so we can move on
22 here.

23 MR. TOSCA: The basis is whatever
24 I --

25 LAW CLERK: Counsel --

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1 STEPHEN FELLMAN

2 MR. TOSCA: -- to say a long
3 diatribe is --

4 LAW CLERK: -- your positions on
5 the objection, I think you will be able
6 to work through this and find sort of a
7 solution. I understand it's a difficult
8 deposition, but it sounds like you both
9 have the idea as to what needs to be
10 done in order to get through this
11 deposition and raise any additional
12 objections with the judge this
13 afternoon.

14 MR. MORRIS: Understood. I will
15 do my best as plaintiff's counsel to get
16 through this as long as there is no
17 long-winded objections that go beyond
18 the basis of privilege or something
19 else, I think we can do that.

20 I'll get started now and thank
21 you for your time.

22 MR. TOSCA: We'll take up what we
23 need to with his Honor this afternoon.

24 (Phone call ended.)

25 MR. MORRIS: Do you need to speak

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1 STEPHEN FELLMAN

2 to your witness or do you want to call
3 him back in?

4 MR. TOSCA: I don't know.

5 What are we doing with the last
6 question, are you reforming the
7 question.

8 MR. MORRIS: She doesn't have it,
9 so do you want to bring him back in or
10 not?

11 MR. TOSCA: I don't know what --

12 MR. MORRIS: I'm going to ask
13 another question. Please bring him back
14 in.

15 MR. TOSCA: You're going with
16 another question, okay.

17 MR. MORRIS: It's 11:36.

18 MR. TOSCA: Excuse me for a
19 minute.

20 (The witness enters the room.)

21 MR. MORRIS: 11:36.

22 MR. TOSCA: He's going to the
23 restroom.

24 MR. MORRIS: Are you asking for a
25 break?

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1 STEPHEN FELLMAN

2 Q. Is that the website to which we
3 have been discussing earlier?

4 A. I guess.

5 Q. Is there another website or is
6 this the only one?

7 A. All I'm aware of. I'm only aware
8 we have a Google listing.

9 Years back, they were toying
10 around with trying to create a website, I
11 didn't really -- it's not something we put a
12 lot of energy into.

13 Q. When you say "we," to whom are
14 you referring?

15 A. Staff and myself.

16 Q. Do you agree that quote, we are
17 the proud achievers of many national, state
18 and local awards, and have designed more than
19 12,000 original plans, end quote?

20 A. Yes.

21 Q. What are the many national awards
22 that you have received?

23 A. The entity since the beginning
24 with my father, they received national awards
25 for swimming pool designs for the Town of

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1 STEPHEN FELLMAN

2 Babylon, and we received awards for several
3 McDonalds that we've done like New Hyde Park,
4 Mattituck. We received awards for helping
5 Town of Babylon with some pro bono stuff.

6 Q. Those are all national awards?

7 A. Awards to us.

8 Q. Do you understand what I mean
9 when I say "national"?

10 A. What do you mean by that?

11 Q. National award, a nationwide
12 award, not awarded by, for instance, a
13 township or a village. Babylon is a township,
14 correct?

15 MR. TOSCA: Objection.

16 You can answer.

17 A. Well, any awards we received
18 would be from within the state of New York.

19 Q. Can you name one national award
20 that you received in your capacity as employee
21 or otherwise for SRF, P.C.?

22 MR. TOSCA: Objection to the
23 form.

24 You can answer.

25 A. There's no national award for

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1 STEPHEN FELLMAN

2 that entity.

3 Q. Are you aware that the website
4 says quote, we are the proud achievers of many
5 national, state, and local awards, end quote?

6 A. Yes, going from the origin of the
7 architectural center.

8 Q. The origin of that architectural
9 center, what national award has the
10 architectural center received?

11 A. They received a national award
12 for swimming pool design from the Town of
13 Babylon?

14 Q. By whom?

15 A. Something out the Washington, I
16 forget.

17 Q. This SRF Architect, P.C., is this
18 in addition to Stephen Fellman, the
19 professional corporation that you mentioned?

20 MR. TOSCA: Objection.

21 You can answer.

22 A. That's the second. The first one
23 was Stephen Ray Fellman Architect. SRF is the
24 current.

25 Q. SRF is the current?

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1 STEPHEN FELLMAN

2 You can answer.

3 A. I don't know. I know I can under
4 them, under the zoning code.

5 Q. The answer is you don't know?

6 A. That's my answer.

7 Q. In the course of your regular
8 professional activities as Village of Babylon
9 building inspector, are you responsible for
10 enforcing the Village of Babylon code?

11 A. Yes.

12 Q. Are you a peace officer as
13 defined in the State of New York?

14 MR. TOSCA: Objection.

15 A. No.

16 Q. Do you carry a weapon throughout
17 the course of your regular activities --

18 A. No.

19 Q. -- as Village of Babylon building
20 inspector?

21 A. No.

22 MR. TOSCA: Let him finish.

23 A. No guns.

24 Q. Are you licensed to carry a
25 weapon?

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1 STEPHEN FELLMAN

2 A. No.

3 Q. Do you operate a vehicle owned by
4 the Village of Babylon?

5 A. No.

6 Q. Do you operate a vehicle at any
7 time owned by the Village of Farmingdale?

8 A. No.

9 Q. Do you operate a vehicle any time
10 owned by Roslyn Harbor?

11 A. No.

12 Q. Do you operate a vehicle owned by
13 SFR, P.C.?

14 A. No.

15 Q. Do you operate a vehicle at any
16 time owned by Lake Success?

17 A. No.

18 Q. Have you operated a vehicle at
19 any time owned by Roslyn Estates?

20 A. No.

21 Q. Have you ever operated a vehicle
22 owned by a public entity?

23 A. No.

24 Q. In the course of your regular
25 professional activities as Village of Babylon

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1 STEPHEN FELLMAN

2 A. No, I don't know.

3 Q. Did all the buildings you
4 designed as a registered architect comply with
5 the provisions of the Fair Housing Act?

6 MR. TOSCA: Objection.

7 You can answer.

8 A. I believe we did.

9 Q. Have you designed any buildings
10 since 2008?

11 A. Yes.

12 Q. Do all the buildings you designed
13 since 2008 comply with the provisions and
14 regulations under the Fair Housing Act?

15 A. I believe so.

16 Q. Who is ultimately responsible
17 with whether they comply with the Fair Housing
18 Act?

19 A. Ultimately the drawings, so I'm
20 responsible.

21 Q. Have you ever been known by any
22 other name?

23 A. No.

24 Q. Do you recognize the name
25 Patricia Maroni (phonetic) Fellman?

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1 STEPHEN FELLMAN

2 A. Yes.

3 Q. Who is that person?

4 A. My wife.

5 Q. Do you recognize the name

6 Patricia J. Fellman?

7 A. My ex-wife.

8 Q. Do you recognize the name

9 Patricia A. Fellman?

10 A. That's my ex-wife. I don't know
11 who J is.

12 Q. Do you recognize the name Mark O.
13 Fellman?

14 A. Mark O. Fellman?

15 I have the brother Mark Fellman.

16 Q. Is your brother 68 years old,
17 approximately?

18 A. Yes.

19 Q. Do you recognize the name Denise
20 Ann Fellman?

21 A. Yes.

22 Q. Who is that?

23 A. My evil stepmother.

24 Q. Do you recognize the name
25 Ashley G. Fellman?

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1 STEPHEN FELLMAN

2 A. Ashley, that's my daughter.

3 Q. Aside from the three electronic
4 mail addresses that you testified to earlier,
5 do you have any additional electronic mail
6 addresses?

7 MR. TOSCA: Objection.

8 You can answer.

9 A. Just the office mail at
10 Srfaia.com.

11 Q. Do you have any other electronic
12 mail addresses or mediums to which you accept
13 electronic messages aside from those four
14 electronic mail addresses?

15 A. Texts on my phone.

16 Q. Do you utilize text on your phone
17 in your duties as Village of Babylon building
18 inspector?

19 A. Yes.

20 Q. Do you utilize texting on your
21 phone within your duties by the Village of
22 Farmingdale?

23 A. Yes.

24 Q. Do you utilize texting on your
25 phone within your ordinary duties through your

John Lepper v. Village of Babylon
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1 STEPHEN FELLMAN

2 the subject of this litigation?

3 MR. TOSCA: Objection.

4 You can answer.

5 A. The attorneys that are here
6 and -- Debbie Longo.

7 Q. Anyone else?

8 A. I think that's it.

9 Q. Have you deleted or destroyed any
10 e-mails since this litigation has commenced?

11 A. No.

12 Q. Do you reside at 3 True Harbor
13 Way, West Islip, New York 11795-5147?

14 A. Yes.

15 Q. Have you resided there
16 continuously since February 1, 2003 to today?

17 A. I have been there for 16 years.

18 Q. Do you receive mail at that
19 address from the United States Post Office?

20 A. Yes.

21 Q. There is a telephone number at
22 that address (631)669-1894.

23 A. We don't use it.

24 Q. Is that the telephone number at
25 that address?

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1 STEPHEN FELLMAN

2 A. That was the phone number, we
3 disconnected the phone, we never use it.

4 Q. Do you know that there are
5 19 registered sex offenders nearby?

6 MR. TOSCA: Objection.

7 A. No.

8 Q. In the course of your regular
9 professional activities as the building
10 inspector for the Village of Roslyn, are you
11 aware of Title 8 of the Civil Rights Act?

12 A. Ask that question again.

13 Q. In the course of your
14 professional activities as the building
15 inspector for the Village of Roslyn, are you
16 aware of Title 8 of the Civil Rights Act?

17 A. I'm aware of it.

18 Q. In your work as a registered
19 architect, did you incorporate Title 8 of the
20 Fair Housing Act into your building designs?

21 A. Yes.

22 Q. Did there come a time, aside from
23 when we spoke, when you were prosecuted for
24 failure to exert the Fair Housing Provisions
25 in structures that you designed?

EXHIBIT “L”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
JOHN LEPPER and NOELLE LEPPER, individually

and as parents and natural guardians of
their infant children, B.J.L and B.I.,

Plaintiffs,

- against -

VILLAGE OF BABYLON; and, RALPH SCORDINO, mayor,
KEVIN MULDOWNEY, deputy mayor, ROBYN
SILVESTRI, Village Trustee, TONY DAVIDA,
Village Trustee, MARY ADAMS, Village Trustee;
STEPHEN FELLMAN, Village of Babylon Building
Inspector; SUZANNE SCHETTINO, Department of
Public Works; GERARD GLASS, Esq., Village of
Babylon Attorney; DEBORAH LONGO, Planning
Board, Village of Babylon, each individually
and in their official capacity, and John
and/or Jane Doe, unnamed, unidentified
complainants,

Defendants.

Index No.: 2:18-cv-07011 JFB-GRB

-----x

RALPH A. SCORDINO

135 Pinelawn Road
Melville, New York

December 5, 2019
10:11 a.m.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

2

Examination Before Trial of a
Defendant, RALPH A. SCORDINO, pursuant to
Subpoena, before Stephanie O'Keefe, a Notary
Public of the State of New York.

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3

A P P E A R A N C E S :

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516-739-0400

ALSO PRESENT:

John Lepper, Plaintiff

Gerard Glass, Esq., Defendant

Mary Adams, Defendant

Shannon E. Fillmore

John Lepper v. Village of Babylon
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4

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

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SCORDINO, RALPH A. - December 5, 2019

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MR. MORRIS: Time is 10:11 a.m.

R A L P H A . S C O R D I N O, called as a
witness, having been duly sworn by a
Notary Public, was examined and
testified as follows:

EXAMINATION BY

MR. MORRIS:

Q. Please state your full name for
the record.

A. Ralph A. Scordino.

Q. What is your address?

A. 89 Washington Street, Babylon
Village, New York 11702.

MR. TOSCA: Before we begin, we
note our objection to the use of the
video camera as we have done before. We
continue with the objection of the way
you're conducting the video.

MR. MORRIS: Objection noted.

Q. Mr. Scordino, any reason that you
can't tell the truth here today?

A. Absolutely not.

Q. You understand the penalties of
perjury, right?

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6

1 R. SCORDINO

2 A. I absolutely do.

3 Q. You understand what happens if
4 you lie under oath?

5 A. Yes.

6 Q. Sir, when were you born?

7 A. XX/XX/1949.

8 MR. TOSCA: Please only put the
9 year on the record.

10 Q. How old are you now?

11 A. 70.

12 Q. Have you ever been known by any
13 other name?

14 A. No.

15 Q. Did you recognize the name
16 Dina M. Vajelatos?

17 A. I sure do.

18 Q. How do you know Dina M.
19 Vajelatos?

20 A. She is my daughter.

21 Q. How old is she?

22 A. I believe she is 40, over 40.

23 Q. Do you interact with Dina M.
24 Vajelatos regularly?

25 A. Sure.

John Lepper v. Village of Babylon
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7

1 R. SCORDINO

2 Q. In any business capacity?

3 A. No.

4 Q. What about in your capacity as an
5 elected official?

6 A. No.

7 Q. Is Ms. Vajelatos married?

8 A. Yes.

9 Q. To whom?

10 A. Spiro Vajelatos.

11 Q. When were they married?

12 A. I guess eight years ago. I'm not
13 sure of the date.

14 Q. When did you first meet Spiro
15 Vajelatos?

16 A. I can't remember that.

17 Q. Do you interact with Spiro
18 Vajelatos regularly?

19 A. Yeah, he's my son in law.

20 Q. Do you interact with him in
21 business?

22 A. No.

23 Q. In your capacity as an elected
24 official?

25 A. No.

John Lepper v. Village of Babylon
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8

1 R. SCORDINO

2 Q. What about socially?

3 A. He's my son-in-law.

4 Q. I take it the answer is yes?

5 A. Yes.

6 Q. Have you ever communicated with
7 Dina Vajelatos by electronic mail?

8 A. No.

9 Q. Have you ever communicated with
10 Dina Vajelatos through social media?

11 A. No.

12 Q. What about by telephone?

13 A. Yes.

14 Q. What about by text?

15 A. No.

16 Q. Any other means of writing?

17 A. No.

18 Q. How about Spiro Vajelatos, have
19 you ever communicated with him by electronic
20 mail?

21 A. No.

22 Q. What about through social media?

23 A. No.

24 Q. Do you recognize the name
25 Robert M. Scordino?

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9

1 R. SCORDINO

2 A. Yes. He's my brother.

3 Q. Do you have any other brothers?

4 A. No.

5 Q. Do you interact with your brother
6 regularly in business?

7 A. No.

8 Q. What about in your capacity as an
9 elected official?

10 A. No.

11 Q. What about socially?

12 A. Very rarely.

13 Q. Where does your brother live now?

14 A. Florida.

15 Q. Where in Florida?

16 A. Melbourne Beach.

17 MR. TOSCA: Objection.

18 Q. Have you ever communicated with
19 Robert M. Scordino by electronic mail?

20 A. No.

21 Q. What about through social media?

22 A. No.

23 Q. What about by telephone?

24 A. Yes.

25 Q. By text?

John Lepper v. Village of Babylon
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10

1 R. SCORDINO

2 A. No.

3 Q. What about by any other means in
4 writing?

5 A. No.

6 Q. Do you know who Ralph O. Scordino
7 is?

8 A. Yes.

9 Q. Who is Ralph O. Scordino?

10 A. My father.

11 Q. Where is your father now?

12 A. Passed away.

13 Q. When your father was alive, did
14 you interact with him in your business?

15 A. No.

16 Q. What about in your capacity as an
17 elected official?

18 A. No.

19 Q. Have you ever communicated with
20 Ralph O. Scordino by electronic mail?

21 MR. TOSCA: Objection.

22 You can answer.

23 A. He passed away.

24 Q. In the past, when he was alive,
25 did you use electronic mail with him?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

11

1 R. SCORDINO

2 A. No. No. No.

3 Q. You use electronic mail, right?

4 A. Very rarely.

5 Q. Did Ralph O. Scordino have a
6 social media account?

7 A. No.

8 Q. Do you recognize the name Paul D.
9 Scordino?

10 A. Yes.

11 Q. Who is Paul D. Scordino?

12 A. My son.

13 Q. How old is your son?

14 A. 36.

15 Q. He is the union of what marriage?

16 A. I don't --

17 MR. TOSCA: Objection.

18 Q. He the results of what
19 relationship?

20 MR. TOSCA: Objection.

21 Q. Who is his mother?

22 A. Who is my --

23 Q. Son's mother.

24 A. Linda Scordino, my wife.

25 Q. Okay. That's what I'm asking.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

12

1 R. SCORDINO

2 I'm not trying to trick you.

3 Do you interact with Paul D.

4 Scordino regularly?

5 A. Yes.

6 Q. Do you interact with Paul D.

7 Scordino in business?

8 A. No.

9 Q. Did you interact with Paul D.

10 Scordino in your capacity as elected official?

11 A. No.

12 Q. Have you ever communicated with

13 Paul D. Scordino by electronic mail?

14 A. No.

15 Q. What about through social media?

16 A. No.

17 Q. What about by telephone?

18 A. Yes.

19 Q. What about by text message?

20 A. No.

21 Q. Do you communicate with Paul D.

22 Scordino by any other means of writing?

23 A. No.

24 Q. Do you recognize the name

25 Marjorie A. Scordino?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

13

1 R. SCORDINO

2 A. Sure.

3 Q. Who is Marjorie A. Scordino?

4 A. She's my mother.

5 Q. Where is your mother now?

6 A. She passed away.

7 Q. When your mother was alive, did

8 you interact with your mother in business?

9 A. No.

10 Q. What about in your capacity as an

11 elected official?

12 A. No.

13 Q. Have you ever communicated with

14 Marjorie A. Scordino by electronic mail?

15 A. No.

16 Q. What about social media?

17 A. No.

18 Q. By text message?

19 A. No.

20 Q. Any other means in writing?

21 A. No.

22 Q. You said earlier Linda N.

23 Scordino is your wife?

24 A. Yes.

25 Q. How long have you been married

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

14

1 R. SCORDINO

2 for?

3 A. Forty-three. Forty-four. Let go
4 with forty-four.

5 Q. Forty-four years?

6 A. Yes.

7 Q. Do you have the date on which you
8 were married?

9 A. August 17, forty years ago.

10 Q. Is that '79?

11 A. That's around that time.

12 Q. Okay.

13 What are the circumstances under
14 which you first met Linda N. Scordino?

15 A. Repeat that question again.

16 (Whereupon, the record was read
17 by the reporter.)

18 MR. TOSCA: Objection.

19 You can answer over objection.

20 A. I guess it was around 1972, we
21 both worked together. Let's go back even
22 further, elementary school, we both went to
23 the same grammar school, St. Joseph's in
24 Babylon Village. And then I didn't see her
25 for a while. She went to West Islip school.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

15

1 R. SCORDINO

2 I went to Babylon school. And we ended up
3 being friends at Oquenock Elementary School
4 where she worked, where I worked also, for the
5 West Islip School District.

6 Q. Do you share any business
7 relationship with Linda N. Scordino?

8 A. No.

9 Q. Has she ever worked for the
10 Village of Babylon under you?

11 A. No.

12 Q. Do you communicate with Linda N.
13 Scordino by electronic mail?

14 A. Yes. Occasionally.

15 Q. When you say occasionally, how
16 many instances could you recall?

17 A. If she texts me to pick up coffee
18 or milk on the way home and she calls.

19 Q. Have you ever communicated with
20 Linda N. Scordino through social media?

21 A. No.

22 Q. Have you ever communicated with
23 Linda N. Scordino by any other means in
24 writing?

25 A. No.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

16

1 R. SCORDINO

2 Q. Do you recognize the name Jerry
3 Don Moses?

4 A. No.

5 Q. Do you recognize the name James
6 Lawrence Manfre?

7 A. Yes.

8 Q. Who if James Lawrence Manfre?

9 A. I believe he lived right across
10 the street from me.

11 Q. Under what circumstances did you
12 first meet Mr. Manfre?

13 A. That's too far back. Neighbors
14 talking to each other back and forth as
15 neighbors going back a number of years.

16 Q. Do you interact with James
17 Lawrence Manfre regularly?

18 A. No.

19 Q. When was that last time you spoke
20 or communicated with Mr. Manfre?

21 A. Many years ago.

22 Q. More or less than ten years ago?

23 A. Pardon me.

24 Q. More or less that ten years ago?

25 A. More or less than ten years.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

17

1 R. SCORDINO

2 Probably more.

3 Q. Have you ever communicated by
4 electronic mail --

5 A. No.

6 Q. -- with James Lawrence Manfre?

7 A. No.

8 Q. What about through social media?

9 A. No.

10 Q. Do you know the name Cornelia Ann
11 Downing-Manfre?

12 A. I believe that was his wife.

13 Q. When you say his, you're
14 referring to James Laurence Manfre?

15 A. Yes.

16 Q. Under what circumstances did you
17 come to know Cornelia Ann Downing-Manfre?

18 A. As a neighbor. That's all.

19 Q. When did you first meet her?

20 A. A number of years ago.

21 Q. More than ten years ago?

22 A. Probably more than that.

23 Q. When was the last time you spoke
24 with her or communicated with her?

25 A. Many years ago.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

18

1 R. SCORDINO

2 Q. More than ten years ago?

3 A. More.

4 Q. Have you ever communicated with
5 Cornelia Ann Downing-Manfre by electronic
6 mail?

7 A. No.

8 Q. What about by social media?

9 A. No.

10 Q. Have you ever held Tennessee
11 phone number area code 901?

12 A. No.

13 Q. Have you ever lived in the state
14 of Tennessee?

15 A. No.

16 Q. Have you ever had the phone
17 number (631) 669-0058?

18 A. Yes.

19 Q. When did you first obtain that
20 telephone number?

21 A. Fifty years ago. I don't know.

22 Q. Is that a home line, landline?

23 A. Home line.

24 Q. At what home is that line
25 connected?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

19

1 R. SCORDINO

2 A. 89 Washington Avenue.

3 Q. Do you still have that telephone
4 number?

5 A. Yes, I do.

6 Q. Have you ever had the phone
7 number (516) 587-7226?

8 A. No.

9 Q. Have you ever had the telephone
10 number (631) 365-9413?

11 A. 9413, I don't recall that number.
12 That other number that you call,
13 7226, is my parents' phone number.

14 Q. When you say it's your parents'
15 phone number, did you live at the same house
16 as your parents at some point?

17 A. At some point.

18 Q. Was that a phone number which you
19 could be reached at some point?

20 A. Yes.

21 Q. Do you still have the phone
22 (516) 587-7226?

23 A. No. I don't believe it was 516.

24 Q. It was 631?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

20

1 R. SCORDINO

2 Q. When did you have that telephone
3 number?

4 A. Back when I lived with my
5 parents.

6 Q. What address?

7 A. 189 -- 152 Cadman Avenue.

8 Q. Do you still have that telephone
9 number?

10 A. Me, no.

11 Q. Have you ever had the phone
12 number (631)365-9413?

13 A. I don't recall that number.

14 Q. Have you ever had the telephone
15 number (516)669-6923?

16 MR. TOSCA: Objection.

17 You can answer over objection.

18 A. I can't recall that number
19 either.

20 Q. Have you ever had the telephone
21 number (631)583-5195?

22 MR. TOSCA: Objection.

23 You can answer over objection.

24 A. Yes.

25 Q. What residence or facility or

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

21

1 R. SCORDINO

2 property is the that telephone number located?

3 A. That is my number for my
4 residence during the summer when I'm working
5 at Ocean Beach.

6 Q. When you say Ocean Beach, are you
7 referring to Fire Island?

8 A. Yes.

9 Q. What is that address at the
10 residence at which you work?

11 A. 306 Cottage.

12 Q. Cottage Road, Drive?

13 A. Cottage.

14 Q. That's Fire Island, New York?

15 A. Yes.

16 Q. Area code 11770?

17 A. Yes.

18 Q. What are you doing when you're
19 working at Fire Island?

20 A. I'm a director of a day camp.

21 Q. When did you first obtain the
22 telephone number (631)583-5195?

23 A. Two years ago.

24 Q. Do you still have that telephone
25 number?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

22

1 R. SCORDINO

2 A. Yes.

3 Q. Have you had the phone number
4 (516) 669-0058?

5 MR. TOSCA: Objection.

6 You can answer.

7 A. Same number as before, isn't it?
8 That's my house number.

9 Q. Have you ever had the telephone
10 number (845) 932-5084?

11 MR. TOSCA: Objection.

12 You can answer.

13 A. I can't remember that number. I
14 don't know what that number is.

15 Q. Have you had a telephone number
16 with an 845 area code?

17 MR. TOSCA: Objection.

18 You can answer.

19 A. 845, I think that's the upstate
20 number.

21 Q. When you say upstate number --

22 A. My second house. I have a second
23 house up in Sullivan County.

24 Q. What is the address for the
25 second house?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

23

1 R. SCORDINO

2 MR. TOSCA: Objection.

3 A. Burnas Road, B-U-R-N-A-S,
4 73 Burnas Road.

5 Q. What county is that home located?

6 A. In Sullivan County.

7 Q. Do you have the area code?

8 A. Area code, I think 845.

9 Q. Zip code, excuse me?

10 A. No, I'm not sure. I think it's
11 12370, I think. I'm not a hundred percent
12 sure.

13 Q. So when did you first obtain the
14 (845)932-5084 telephone number?

15 A. Six years ago.

16 Q. Do you still have that telephone
17 number?

18 A. Yes.

19 Q. Do you work out of that home in
20 Sullivan County?

21 A. In what capacity? I'm not clear
22 with the question.

23 Q. Sure.

24 Do you do any work in Sullivan
25 County?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

24

1 R. SCORDINO

2 A. No.

3 Q. Do you do work remotely from
4 Sullivan County?

5 A. No.

6 Q. Have you ever maintained an
7 electronic mail account?

8 A. No.

9 Q. You have no e-mail account?

10 A. For the Village, yes.

11 Q. I'm looking for electronic mail
12 accounts that you have ever had, ever.

13 A. Um-hum.

14 Q. The answer is yes, you do have
15 electronic mail?

16 A. Right, for the Village.

17 Q. What is that electronic mail
18 account?

19 A. I don't what you mean by -- I'm
20 very untechy [sic] guy. I sit at the
21 computer, everything else is taken care of as
22 far as numbers and everything else, so I don't
23 know what you're talking about.

24 Q. When you say taken care of, by
25 whom?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

25

1 R. SCORDINO

2 A. By the Village.

3 Q. What do you do for the Village?

4 A. I'm mayor.

5 Q. You oversee the Village of
6 Babylon, correct?

7 A. Right. We have technical people
8 that take care of that.

9 Q. Let's talk about that.
10 Who are those technical people?

11 A. The deputy mayor takes care of
12 all our computers in the Village.

13 Q. What is the Deputy Mayor's name?

14 A. Kevin Muldowney.

15 Q. How long has he taken care of all
16 the computers in the Village of Babylon?

17 A. Since he has been as trustee.

18 Q. How long has that been?

19 A. I guess it's over 25 years, I
20 think.

21 Q. Is he responsible for the
22 maintaining of electronic mail addresses?

23 A. Yes.

24 Q. Is he responsible for maintaining
25 your electronic mail address?

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SCORDINO, RALPH A. - December 5, 2019

26

1 R. SCORDINO

2 A. Yes.

3 Q. As you sit here today, if someone
4 was to ask you for your e-mail account
5 information to send you e-mail, you don't know
6 what that is?

7 A. Yes, I do. It's
8 mayor@VillageofBabylonNY.gov.

9 Q. That username is associated with
10 you, correct?

11 A. That is correct.

12 Q. Because you are the mayor?

13 A. Right.

14 Q. How long have you maintained that
15 e-mail address?

16 A. I think about two years.

17 Q. Did you maintain an electronic
18 mail address prior to that e-mail address?

19 A. It changed. I think it was
20 RS@VillageofBabylon.gov, I believe.

21 Q. When did it change?

22 A. About two years ago.

23 Q. Do you recall the date?

24 A. No.

25 Q. Do you recall the month?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

27

1 R. SCORDINO

2 A. No.

3 Q. Was it in the year 2017?

4 A. I don't remember. I don't
5 remember exactly.

6 Q. Do you regularly use electronic
7 mail?

8 A. Yes, every day.

9 Q. Did you use the
10 RS@VillageofBabylon.gov every day?

11 A. Yes.

12 Q. Do you still --

13 A. That was the Village computer at
14 my desk.

15 Q. Do you still use
16 RS@VillageofBabylon.gov?

17 A. No.

18 Q. When did you stop using it?

19 A. When that e-mail changed.

20 Q. What I'm asking is, what day did
21 that occur?

22 A. I don't remember. I think it was
23 about two years ago though.

24 Q. Do you recall if it was in 2017?

25 A. Could be. I'm not sure.

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SCORDINO, RALPH A. - December 5, 2019

28

1 R. SCORDINO

2 Q. Is there anything that prevents
3 you from recalling events that occurred
4 previous to today?

5 MR. TOSCA: Objection.

6 You can answer over objection.

7 A. No.

8 Q. You're not under any
9 medication --

10 A. No.

11 Q. -- any alcohol or drugs?

12 A. No.

13 Q. You haven't drank in the past
14 24 hours, correct?

15 A. No.

16 MR. TOSCA: Objection.

17 Q. Can you give me the month in
18 which your e-mail address changed from
19 RS@VillageofBabylon.gov, the e-mail that you
20 used every day, to mayor@VillageofBabylon.gov?

21 MR. TOSCA: Objection.

22 A. I don't recall the exact date.
23 It was within the last two years.

24 Q. Do you remember the circumstances
25 under which it changed?

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SCORDINO, RALPH A. - December 5, 2019

29

1 R. SCORDINO

2 A. I believe it was because the
3 company wanted us to change the e-mail.

4 Q. What company?

5 A. That takes care of our computers,
6 also our security.

7 Q. What company is that?

8 A. I don't remember. I can't
9 remember.

10 Q. Are you responsible for the
11 hiring or firing of that company?

12 A. No.

13 Q. Who is responsible for employing
14 that company for Village of Babylon?

15 A. It would be Kevin Muldowney who
16 would make the recommendations to the Board of
17 Trustees.

18 Q. When you say, make the
19 recommendations to the Board of Trustees --

20 A. If he wants to change the
21 company.

22 Q. Did you approve the change of the
23 company?

24 A. Yes. Village Board did.

25 Q. How did that occur?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

30

1 R. SCORDINO

2 A. I can't remember. It was a
3 number of years ago.

4 Q. When you say, you can't remember,
5 so if you were to change the tech company, you
6 wouldn't know the process how that would occur
7 as the mayor of the Village of Babylon?

8 A. You didn't ask that question.

9 Q. So I'm asking you now.
10 How does that process occur? Say
11 you want to change --

12 A. If I want to change it, he would
13 probably come to us and make a recommendation,
14 they would like to change the company for the
15 computers.

16 We as the Trustees, the Board
17 would discuss it, look at all the numbers and
18 decide whether we wanted to do it or not.

19 Q. Say you wanted to do it, what
20 would happen next?

21 A. What would happen next is that we
22 probably have resolution to accept that
23 company to do the computers.

24 Q. A resolution would be in writing?

25 A. Sure.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

31

1 R. SCORDINO

2 Q. When you had that resolution,
3 what, if anything, would occur after that?

4 A. I don't follow. After the
5 resolution, we probably hire them.

6 Q. When you say probably hire them,
7 is there a vote?

8 A. Vote.

9 Q. Would you participate in that
10 voting process?

11 A. Yes. Sure.

12 Q. And that occurred when you
13 changed companies?

14 A. Yes.

15 Q. You don't recall when that was?

16 A. No.

17 MR. TOSCA: Objection.

18 Asked and answered.

19 Q. What about the resolution, was
20 there a resolution when your e-mail address
21 changed from RS@VillageofBabylon.gov to
22 mayor@VillageofBabylon.gov?

23 A. I'm not sure.

24 Q. You don't know?

25 A. I don't think there was a

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

32

1 R. SCORDINO

2 resolution.

3 Q. How could it have occurred
4 without a resolution?

5 MR. TOSCA: Objection.

6 You can answer over objection.

7 A. Because it doesn't need a
8 resolution to change.

9 Q. How would it occur without a
10 resolution?

11 A. Just change with the company,
12 they would change it.

13 Q. You're saying the deputy mayor
14 could take care of that without seeking
15 approval of the other Village of Babylon
16 members?

17 MR. TOSCA: Objection.

18 You can answer.

19 A. Yes, he could do that.

20 Q. So your e-mail now is
21 mayor@VillageofBabylon.gov, correct.

22 A. NY.gov.

23 Q. NY.gov.

24 Aside from the two electronic
25 mails you mentioned, do you have any other

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SCORDINO, RALPH A. - December 5, 2019

33

1 R. SCORDINO

2 electronic mail address or have you had any
3 other electronic mail addresses?

4 MR. TOSCA: Objection.

5 You can answer over objection.

6 A. I don't believe so. I don't
7 have -- they're the only ones I know.

8 Q. Okay.

9 Aside from the
10 mayor@VillageofBabylonNY.gov, do you maintain
11 any other message accounts, electronic mail
12 accounts, anything else?

13 A. No.

14 Q. When you obtained the
15 mayor@VillageofBabylonNY.gov e-mail address,
16 was there a trustee meeting or resolution
17 regarding the change?

18 A. No. I don't believe so.

19 MR. TOSCA: Objection.

20 Q. How many electronic mail accounts
21 do you have access to at the present time?

22 A. One.

23 Q. Are you sure you understand what
24 I mean by asking you about the electronic mail
25 accounts you may have access to at the present

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SCORDINO, RALPH A. - December 5, 2019

34

1 R. SCORDINO

2 time, even if you are not the owner of these
3 accounts?

4 MR. TOSCA: Objection.

5 You can answer over objection.

6 A. Repeat the question again.

7 (Whereupon, the requested portion
8 was read back by the reporter.)

9 A. That's the only one I really
10 have.

11 Q. My question is, do you have
12 access to other Village of Babylon, New York
13 e-mail accounts?

14 A. No.

15 Q. You couldn't access them if you
16 wanted to, correct?

17 MR. TOSCA: Objection.

18 A. No.

19 Q. Who is the internet service
20 provider for the electronic mail account that
21 you just mentioned?

22 A. I'm not sure what the name is.

23 Q. Are they paid by the Village of
24 Babylon?

25 A. Yes.

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35

1 R. SCORDINO

2 Q. How are they paid?

3 A. Voucher, I guess.

4 Q. When you say you guess, do you
5 now know?

6 A. Voucher.

7 Q. Can you explain what you mean by
8 voucher?

9 A. I guess we have a voucher system
10 where they send in a voucher and we pay it by
11 Village account through the treasurer's
12 office.

13 Q. Do you have to approve the
14 voucher?

15 A. Yes.

16 Q. How does that process occur?

17 A. Requisition goes in, I sign the
18 requisition, it goes back to the treasurer's
19 office, they pay the voucher.

20 Q. You say you sign the requisition
21 for payment?

22 A. Um-hum.

23 Q. The payment was to the internet
24 service provider?

25 A. Um-hum.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

36

1 R. SCORDINO

2 Q. You don't know who that is?

3 MR. TOSCA: Objection.

4 Asked and answered.

5 A. I can't remember.

6 Q. You have signed -- any other
7 company that, I guess you sign payment to, you
8 just sign it, what is the process like for
9 that?

10 A. Voucher comes in, okay, with the
11 name and I sign it on the bottom with the
12 amount.

13 Q. You do that often for your
14 internet service provider?

15 A. I'm not sure. Probably every six
16 months. I don't know if it's half-a-year
17 service, quarterly, monthly.

18 Q. Who would know that?

19 A. The deputy mayor would know that.

20 Q. Does the deputy mayor act
21 independently of you?

22 A. No.

23 Q. Can you explain what you mean by
24 that?

25 MR. TOSCA: Objection.

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37

1 R. SCORDINO

2 A. Independently he confers with me
3 a lot on different things.

4 Q. Do you answer to him or does he
5 answer to you?

6 MR. TOSCA: Objection.

7 You can answer.

8 MR. MORRIS: If you're going to
9 object, object.

10 You're putting hand gestures,
11 speaking objection.

12 MR. TOSCA: I'm not doing any
13 hand gestures, sir, I had my hand on the
14 table, okay. That's not a hand gesture.
15 I can keep my hand on the table.
16 Please.

17 You can answer.

18 MR. MORRIS: That's it.

19 For that matter, if your attorney
20 tells you not to answer, don't answer.

21 Objection, we still answer
22 question, right?

23 MR. TOSCA: I said he can answer
24 the question.

25 MR. MORRIS: I just want to make

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38

1 R. SCORDINO

2 sure because hands --

3 MR. TOSCA: I just want to make
4 sure you're not misrepresenting what is
5 being said.

6 MR. MORRIS: Of course, Counsel.
7 So don't put your hands or slap the
8 table.

9 MR. TOSCA: I can put my hand on
10 the table if so desired.

11 MR. MORRIS: Understood, it might
12 seem --

13 MR. TOSCA: You have your hands
14 on the table and you lift your hands and
15 you make gestures with your hands.

16 MR. MORRIS: Counsel, it just
17 might seem when you have your hand out
18 in front of a client who is about to
19 answer a question, it's almost as if
20 you're preventing him from being deposed
21 here today.

22 MR. TOSCA: I'm asking him to
23 wait before I put my objection on the
24 record.

25 MR. MORRIS: So object, and we'll

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39

1 R. SCORDINO

2 move on.

3 MR. TOSCA: I can ask him to
4 pause before I object.

5 MR. MORRIS: Okay, but when you
6 say -- ask him to pause --

7 MR. TOSCA: If I'm putting my
8 hand to wait, okay, so I can say
9 objection. That's permissible, Counsel.

10 MR. MORRIS: You can object
11 without making hand gestures.

12 That's what I'm asking you to do.
13 Can you do that?

14 MR. TOSCA: I'm going to ask you
15 not to use your hands okay.

16 I mean you realize how ridiculous
17 your request is, right?

18 MR. MORRIS: Counsel, object and
19 we'll move on. Okay.

20 MR. TOSCA: I did object,
21 Counselor.

22 MR. MORRIS: We're done.

23 MR. TOSCA: Well then -- okay.

24 Go on.

25 Q. Deputy mayor, does he answer to

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 you as mayor?

3 A. Yes.

4 Q. Because he's the deputy?

5 A. Absolutely.

6 Q. And you're the mayor?

7 A. And I'm the mayor.

8 Q. Okay.

9 You don't know who it is that you
10 signed the vouchers for that your deputy --

11 A. I can't remember the company,
12 okay.

13 MR. TOSCA: Objection.

14 That's three times you've asked
15 that question.

16 Q. Have you ever had the e-mail
17 address Rscordino@yahoo.com?

18 A. I don't recall that e-mail.

19 Q. Have you ever had a Yahoo e-mail
20 account?

21 A. I'm not sure.

22 Q. When you say you're not sure, is
23 there anything preventing you from recalling?

24 A. I just don't remember. You're
25 going back many, many years. I don't

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

41

1 R. SCORDINO

2 remember. I don't remember that.

3 Q. You don't recall if you ever used
4 Yahoo.

5 A. You have to understand, I'm not a
6 techy guy, so I don't know. I'm not a hundred
7 percent sure. Okay.

8 Q. You ever use google?

9 A. Google, yes, I have used Google.

10 Q. Did you ever look up directions
11 on the internet?

12 A. Yes.

13 Q. Do you ever use electronic mail
14 on the internet?

15 MR. TOSCA: Objection.

16 A. Yes.

17 Q. Using electronic mail, did you
18 ever use Yahoo?

19 A. I can't recall.

20 Q. You can't recall?

21 A. I didn't recall.

22 Q. Do you have a home computer?

23 A. Yes.

24 Q. Anyone ask you to put aside
25 records that you had on the home computer --

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. No. I haven't used my home
3 computer in probably 20 years.

4 Q. Do you have an internet service
5 provider at your house?

6 A. Yes.

7 Q. Who is your internet service
8 provider at your home?

9 A. I believe it's Verizon. I'm not
10 a hundred percent sure. My wife uses that
11 computer.

12 Q. Do you have any sort of access to
13 subscription television at your house?

14 MR. TOSCA: Objection.

15 A. Verizon, I guess.

16 Q. You don't know if you have
17 Verizon or something else?

18 A. I don't get involved in that. I
19 don't get involved in any of the technical
20 stuff at all, whether it be television -- so I
21 can save you the trouble -- television,
22 computers, teching, phones, that's it.

23 Q. Sir, do you watch television?

24 A. Yes.

25 Q. Do you use a remote to watch

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

43

1 R. SCORDINO

2 television?

3 A. Sure.

4 Q. That remote, does it bear an
5 insignia?

6 A. I couldn't remember what the
7 insignia -- LG maybe on there. I'm not a
8 hundred percent sure.

9 Q. What about the box terminal to
10 which the remote is pointed?

11 A. I'm not sure.

12 Q. You don't know what box you
13 utilize?

14 MR. TOSCA: Objection.

15 A. I'm not sure.

16 Q. Do you watch subscription
17 television?

18 MR. TOSCA: Objection.

19 You can answer.

20 A. What do you mean. I don't
21 understand what you mean.

22 Q. For instance, there is Netflix;
23 for that matter, did you watch the Irishman?

24 A. No.

25 MR. TOSCA: Objection.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Q. Do you know what movie I'm
3 referring to?

4 A. Sure.

5 MR. TOSCA: These questions are
6 now starting to harass, what's the
7 purpose for these questions, so I'm
8 going to start objecting.

9 MR. MORRIS: Counsel, if you're
10 going to speak --

11 MR. TOSCA: No relevance.

12 MR. MORRIS: If you're going to
13 interrupt him, I'm going to have to
14 break this deposition and call the
15 judge.

16 MR. TOSCA: You continue with
17 harassing questions --

18 MR. MORRIS: I'm trying to figure
19 out --

20 MR. TOSCA: -- to answer.

21 MR. MORRIS: -- using an
22 electronic mail address that bears his
23 name, Counsel.

24 MR. TOSCA: You've asked him
25 about his Verizon or whether it's

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Verizon or not, television, this has
3 nothing to do --

4 MR. MORRIS: This is someone who
5 purports to run -- a mayor. You make
6 one more interruption, that's it.

7 MR. TOSCA: That's it for what,
8 sir.

9 MR. MORRIS: We call the judge
10 and you start paying for this.

11 MR. TOSCA: No. Look, Counsel,
12 ask your questions.

13 MR. MORRIS: Object and stop.
14 You have a dialogue, we're going to ask
15 the witness to leave, understood?

16 MR. TOSCA: If you want to have a
17 dialogue now, we'll ask the witness to
18 leave because I'm going to object to
19 harassing questions.

20 MR. MORRIS: Again, you could
21 object, you can't break this deposition.
22 If you would like to do that, we'll call
23 the judge.

24 MR. TOSCA: I'm not breaking the
25 deposition.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 MR. MORRIS: Good.

3 Q. Sir, do you have a cell phone?

4 A. Sure.

5 Q. What is the provider?

6 A. I believe it's Verizon.

7 Q. Do you pay for your cell phone?

8 A. Do I pay, no.

9 Q. Who pays it?

10 A. My wife.

11 Q. Have you been provided a phone by
12 the Village of Babylon?

13 A. No.

14 Q. What kind cellular phone do you
15 have?

16 A. Samsung.

17 Q. How long have you had the Samsung
18 phone for?

19 A. Five years.

20 Q. Is it what's called a smart
21 phone?

22 A. I believe so.

23 Q. Do you receive electronic mail on
24 the Samsung phone?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

47

1 R. SCORDINO

2 Q. What e-mail addresses do you use
3 on the Samsung phone?

4 A. I don't have an e-mail for that
5 phone, I don't believe I get e-mail from it.

6 Q. Can you access electronic mail on
7 your Samsung phone?

8 A. I don't believe I do.

9 Q. You don't believe --

10 A. I don't have a password for it,
11 so I can't access it.

12 Q. You don't have a password for
13 your phone?

14 A. No.

15 Q. How do you use your phone?

16 A. Phone calls.

17 Q. The answer to the question before
18 was you do not access electronic mail?

19 A. Right.

20 Q. Okay.

21 On what device do you access your
22 electronic mail?

23 A. From my officer computer.

24 Q. What computer is that?

25 A. Same computer we talked about,

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 it's the one with the e-mail mayor@.

3 Q. Is it a desktop, laptop,
4 something else?

5 A. Desktop, I guess.

6 Q. On that desktop, have you ever
7 used any internet service aside from the one
8 that Village of Babylon provides?

9 A. No.

10 Q. How is it that you access Google?

11 A. Because it's on my screen and I
12 go to Google.

13 Q. Have you ever gone to Yahoo?

14 A. Maybe. I'm not sure. I don't
15 use the computer that often. Okay.

16 Q. You're not sure because you don't
17 use the computer that often?

18 A. I don't even think Yahoo is on
19 the computer. I think Google is because I use
20 it sometimes.

21 Q. Is it your testimony under oath
22 that Rscordino is not an address that you
23 used?

24 A. I believe --

25 MR. TOSCA: Objection.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. I don't remember that. I don't
3 remember having that e-mail. Okay.

4 Q. You don't remember having a Yahoo
5 e-mail?

6 A. No.

7 Q. Do you have any other e-mails?

8 A. No.

9 Q. Do you remember sending e-mails.

10 A. Pardon me?

11 Q. Do you remember sending e-mails
12 about this case?

13 A. No.

14 Q. Have you ever been asked to
15 segregate your e-mail as a results of this
16 case?

17 A. No.

18 Q. Where are your e-mails stored?

19 A. They're on the computer.

20 Q. When you say, on the computer, is
21 there a server on your hard drive, something
22 else?

23 A. I believe. I guess it's on the
24 server.

25 Q. You say, you guess, what is

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 internet application or applications that you
3 utilize?

4 A. You have to understand, I'm going
5 the tell you one time, I'm not a techy guy,
6 okay. I have no idea about any of this as far
7 as the computer is concerned, okay. I very
8 rarely text. You're asking me questions that
9 I don't know. When I say I don't know. I
10 don't know.

11 Q. When you access your e-mail, can
12 you describe for us how you do it?

13 A. When I answer my e-mails, if
14 there is workflow on my computer, I answer the
15 e-mails.

16 Q. When you say, answer the e-mails,
17 what kind of e-mails do you answer?

18 A. The workflows, if there is -- a
19 resident has access to our computer, they send
20 us a message about anything, could be roads,
21 parking, anything, and I would answer those
22 e-mails through the computer.

23 Q. When you say through the
24 computer, you use the keyboard to type,
25 correct?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. Yes.

3 Q. You use the mouse to scroll,
4 correct?

5 A. Right.

6 Q. What is the program you use to
7 e-mail?

8 A. Don't understand your question.
9 What do you mean program?

10 Q. It just shows up on your computer
11 screen?

12 A. Right.

13 Q. Do you use --

14 A. Go to my mail, I go to my mail
15 and it shows up, various e-mails, I guess you
16 would call them.

17 Q. When you say, go to your mail,
18 how do you do that?

19 A. Open my computer, okay, I go to
20 an icon on the computer, I access that, and
21 there is my mail on the computer.

22 Q. Under that icon, is there any
23 text associated with such icon?

24 A. Text, no.

25 Q. The icon is just the e-mail icon?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. A mail icon.

3 Q. There's no text associated with
4 that icon?

5 A. After I go on the icon, then the
6 text comes up.

7 Q. Do you know on what computer
8 application it comes up?

9 MR. TOSCA: Objection.

10 You can answer.

11 A. I don't follow your question, I
12 really don't.

13 Q. Do you use Windows, is it a Mac,
14 is it --

15 A. I think it's Windows.

16 MR. TOSCA: Let him finish the
17 question.

18 Q. When you start the computer,
19 there's a little insignia comes up --

20 A. Windows.

21 Q. It says Window, right?

22 A. Um-hum.

23 Q. It does that when you start the
24 computer, correct?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

53

1 R. SCORDINO

2 Q. That's not a tech question,
3 right?

4 A. No.

5 Q. You start the computer, is it
6 password protected?

7 A. Yes.

8 Q. I don't want to know your
9 password, but do you enter a username?

10 A. Yes.

11 Q. There's a password associated
12 with your username, correct?

13 A. Yes.

14 Q. You gain access, correct?

15 A. Yes.

16 Q. You click on a mail icon; is that
17 what it is?

18 A. I don't know if it's a mail icon,
19 I think it's probably -- I think maybe
20 outreach, I'm not a hundred percent sure.

21 Q. Microsoft Outreach is the mail
22 program; is that right?

23 A. I'm not sure. I just go to the
24 icon and I press the button and there it is.

25 Q. When you say residents send

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 messages, do you know how those messages show
3 up on your computer?

4 A. I believe it's from our website
5 that they can do it through.

6 Q. You receive the message from the
7 Village of Babylon website?

8 A. Right.

9 Q. That's the Village of Babylon,
10 New York, correct?

11 A. Right.

12 Q. When residents go to that
13 website, you are in receipt of the messages
14 received, correct?

15 A. Right.

16 Q. Sort of like a facsimiles that
17 are received at the office, correct?

18 A. Yes.

19 Q. You're the mayor of the Village
20 of Babylon, right?

21 A. Um-hum.

22 Q. All faxes come through you?

23 A. That's correct.

24 Q. That's because the only fax
25 machine is in your office, right?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

55

1 R. SCORDINO

2 A. There is a couple, I think there
3 is also one -- I'm not a hundred percent sure,
4 I think there's one -- no I believe that's the
5 only one. I'm pretty sure it's the only one.

6 Q. Take your time.

7 A. It's the only one.

8 Q. What's the number associated with
9 that?

10 A. I think it's 631-669- I believe
11 1238, 1236, use 1236.

12 Q. Do you use any other facsimile
13 number?

14 A. No.

15 Q. Do you have one as director of
16 the summer camp?

17 A. Yes.

18 Q. Do you utilize that?

19 A. No.

20 Q. To where do those facsimiles go?

21 A. To the Ocean Beach office.

22 Q. For example, they're not all
23 passed directly through you, like the Village
24 of Babylon facsimiles?

25 MR. TOSCA: Objection to the

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1 R. SCORDINO

2 form.

3 You can answer.

4 A. Sometimes they are.

5 Q. Okay.

6 When you say sometimes they are
7 from Ocean Beach, when they're addressed to
8 you, correct?

9 A. Right.

10 Q. As opposed to Village of Babylon?

11 A. Um-hum.

12 Q. Have you ever had the e-mail
13 address RScordino@pacbell.net?

14 MR. TOSCA: Objection.

15 You can answer.

16 A. No.

17 Q. Did you ever utilize Pacific Bell
18 in your life?

19 A. No.

20 MR. TOSCA: Objection.

21 You can answer.

22 A. No.

23 Q. Have you ever had access to the
24 e-mail address Rscordino@SWbell.net?

25 A. No.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Q. Have you ever utilized
3 Southwestern Bell in your life?

4 A. No.

5 Q. Sir, are you a fisherman?

6 A. Yes.

7 Q. Did you ever fish for tuna?

8 A. Yes.

9 Q. Bluefin tuna?

10 A. Yes.

11 Q. Did you ever have an e-mail
12 address bluefin1@gmail?

13 A. Yes.

14 Q. We just asked you about e-mails,
15 right?

16 A. Um-hum.

17 Q. Does this jar your memory?

18 A. Now that you mention it, yes it
19 jarred my memory.

20 Q. Did you ever use any other e-mail
21 addresses now that your memory is jarred?

22 A. No. You're going back almost
23 40 years on that.

24 Q. You had an e-mail address
25 40 years ago?

John Lepper v. Village of Babylon
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58

1 R. SCORDINO

2 A. That's the one, I think?

3 Q. What internet service provider
4 did you have 40 --

5 A. I have no idea about that.

6 Q. When you say you have no idea,
7 who paid for it?

8 A. My wife did.

9 Q. You used the computer to access
10 electronic mail, correct?

11 A. Yeah.

12 Q. Do you know what computer that
13 was?

14 A. Recent mail?

15 Q. I'm talking about bluefin1.

16 A. That was 40 years ago. I have no
17 idea. I can't remember.

18 Q. I can't remember?

19 A. No.

20 Q. But you remember you had
21 bluefin1?

22 A. Yes.

23 Q. Do you remember the internet
24 service provider?

25 A. No.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

59

1 R. SCORDINO

2 Q. Do you know the full electronic
3 mail address?

4 A. No.

5 Q. Does bluefin1@aol.com jar your
6 memory?

7 A. Yes.

8 Q. Is there anything else to which
9 you would like to testify now that you know
10 bluefin1@aol is your electronic mail address
11 from 40 years ago?

12 A. Four years ago?

13 Q. Forty.

14 A. It's forty year ago, yes.

15 Q. So you had AOL 40 years ago?

16 A. I believe so, yeah. Long time
17 ago.

18 Q. Do you know if you were on a
19 month-to-month subscription or something else?

20 A. I have no idea.

21 MR. TOSCA: Objection.

22 You can answer.

23 Q. Did you have a wireless modem, a
24 straight T-1 connection, did you dial-up? Do
25 you remember how you utilized the AOL?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. No.

3 Q. What computer did you utilize?

4 A. It was on my home computer.

5 Q. With whom did you communicate by
6 that electronic mail address?

7 MR. TOSCA: Forty year ago --
8 objection.

9 MR. MORRIS: Counsel, he's
10 testifying --

11 MR. TOSCA: Counselor --

12 MR. MORRIS: Sir, I'm going to
13 ask you. I'm going to have to ask you
14 to please step out, so I can call the
15 Court.

16 MR. TOSCA: He's a party, you
17 want to call the Court, he stays here.
18 Call the Court. If the judge directs
19 him to leave, he can leave.

20 MR. MORRIS: 10:57.

21 (Counsel changed the battery in
22 video camera.)

23 MR. MORRIS: 10:58.

24 (Mr. Morris places a call to the
25 Court. Phone answered by recording, and

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Mr. Morris dials again.)

3 MALE SPEAKER: Judge Brown's
4 Chambers.

5 RL MR. MORRIS: Good morning.

6 This is attorney Cory Morris
7 calling in the matter of Lepper versus
8 Village of Babylon. I'm calling to seek
9 a ruling from the Judge here based on
10 continued interruptions. I've asked
11 counsel to excuse the deponent during
12 this deposition, everyone is still in
13 the room, so I'll make that known now.

14 MALE SPEAKER: First, we -- if we
15 can go off the record for a second and
16 if you can tell me what the issue is so
17 I can summarize it for the Judge.

18 (Whereupon, a discussion was held
19 off the record from 11:00 through
20 11:08.)

21 (Whereupon, a discussion was held
22 off the record.)

23 MR. MORRIS: Time now is 11:08.

24 MR. TOSCA: One second.

25 MR. MORRIS: Counsel, we have

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 seven hours, it's going to be a long a
3 day.

4 Everybody ready?

5 MR. TOSCA: Ready.

6 MR. MORRIS: Time is now 11:09.

7 Q. Sir, from the time you made
8 bluefin1@aol.com to the time you had
9 mayor@VillageofBabylon.com, what electronic
10 mail addresses did you utilize?

11 A. The office computer, okay, my
12 Village office computer.

13 Q. You didn't you --

14 A. I didn't use any other computer,
15 okay, I've been a trustee -- Forgot it. Go
16 on.

17 Q. I'm sorry, were you --

18 A. Forget about it.

19 Q. So you access bluefin1@AOL.com
20 through the Village of Babylon?

21 A. No.

22 Q. Where did you access that e-mail
23 address?

24 A. My home.

25 Q. Is that the same computer you

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 have now?

3 A. I don't believe so. I think I
4 got a new computer before that.

5 Q. How long did you maintain
6 bluefin1@aol.com for?

7 MR. TOSCA: Objection.

8 A. I'm not sure.

9 Q. With whom did communicate with
10 the electric mail address bluefin1@aol.com?

11 A. To whom did I communicate. I
12 can't recall.

13 Q. Where are the e-mails in that
14 account stored?

15 A. I don't believe so.

16 Q. Where. I asked where.

17 A. I don't know.

18 Q. Do you fish for bluefin tuna?

19 A. Do I? Sometimes.

20 Q. Have you ever caught any?

21 A. Sure.

22 Q. What do you do with the game fish
23 that you catch?

24 A. Eat.

25 Q. Do you play golf?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. Yes.

3 Q. How often?

4 A. During the summer months,
5 probably two times a week.

6 Q. With whom do you play?

7 A. Friends.

8 Q. What is your handicap?

9 MR. TOSCA: Objection.

10 A. Twenty-eight.

11 Q. Are you a righty or lefty?

12 A. Righty.

13 Q. Are you a member of a golf club?

14 A. Yes.

15 Q. What golf club are you a member?

16 MR. TOSCA: Objection.

17 A. Men's Golf Club at the Sumpwams
18 Creek Golf Course in Babylon Village.

19 MR. TOSCA: Objection to form.

20 Q. Does the Village of Babylon
21 maintain a golf club other than the one you
22 just mentioned?

23 MR. TOSCA: Objection.

24 A. I didn't hear the rest of -- end
25 of the question.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

65

1 R. SCORDINO

2 Q. I'm trying.

3 The golf club you just
4 mentioned --

5 A. Right.

6 Q. -- is that a Village of Babylon
7 golf club?

8 A. Yes.

9 Q. Is there another Village of
10 Babylon golf club that exists within the
11 Village of Babylon?

12 A. Yes, I believe so, at that golf
13 course there is. There's two women's and also
14 another men's.

15 Q. Are you a member of those two
16 golf clubs?

17 A. One, the one that plays on
18 Wednesday, this one plays on Tuesday.

19 Q. What are the dues?

20 A. I think that on Tuesday it's \$65,
21 the one on Wednesday is \$50.

22 Q. Have you ever played golf with
23 any Village of Babylon employees?

24 A. Yes.

25 Q. With whom?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

66

1 R. SCORDINO

2 A. Trustee Kevin Muldowney, deputy
3 mayor Kevin Muldowney, and Trustee Tony
4 Davida.

5 Q. Anyone else?

6 A. No.

7 Q. Have you played with any other
8 employees aside from the trustees you just
9 mentioned?

10 MR. TOSCA: Objection.

11 A. At that golf course?

12 Q. At any golf course?

13 A. Let's see.

14 THE WITNESS: Can I speak to
15 counsel?

16 MR. MORRIS: Not when a question
17 is pending.

18 MR. TOSCA: You have to answer
19 the question.

20 A. Yes.

21 Q. Who are those people?

22 A. Jack Rafter.

23 Q. How often do you play golf with
24 Jack Rafter?

25 A. Probably once every summer.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Q. Who is Jack Rafter?

3 A. He is our judge.

4 Q. Do you want to go speak to
5 counsel now?

6 A. No, it's all right.

7 Q. Is there something about Jack
8 Rafter that you need to seek legal advice?

9 MR. TOSCA: Objection.

10 A. I just wanted to find out if I
11 had to answer the question.

12 Q. Any reason why you wouldn't want
13 to answer that question, sir?

14 MR. TOSCA: Objection.

15 A. Pardon me?

16 Q. Any reason --

17 A. I'm not an attorney.

18 Q. And you thought it wise to seek
19 legal counsel?

20 A. Because he's representing me.

21 Q. You got two attorneys here?

22 A. Right, Village attorney and --
23 yes.

24 Q. You don't want to take a break?

25 A. No.

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 Q. Jack Rafter is the Village judge,
3 correct?

4 A. Yes.

5 Q. The same judge that prosecuted
6 the gentleman to my right, correct?

7 A. Yes.

8 Q. You say you only play golf with
9 him how often?

10 A. Once a summer. I believe, I
11 think this year we didn't play at all.

12 Q. You played with him last year?

13 A. Yes.

14 Q. How often do you see Jack Rafter?

15 A. I see Jack ever Tuesday.

16 Q. Is he your judge?

17 A. Yes.

18 Q. Judge for the Village of Babylon?

19 A. Yes.

20 Q. Bluefin1@aol.com, do you remember
21 the last year you had that electronic mail
22 address?

23 A. No.

24 Q. Do you remember the last decade
25 you had that electronic mail address?

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. No.

3 Q. Did you still have that
4 electronic mail address when AOL used to give
5 you those CDs that come in the mail all the
6 time like bars of soap?

7 MR. TOSCA: Objection.

8 A. I don't know what you're talk
9 about.

10 Q. You never got one of those AOL
11 CDs in the mail?

12 A. I don't believe so.

13 Q. You know what I'm talking about,
14 the --

15 A. I don't know what you're talking
16 about.

17 Q. Let's back up.

18 Sir, do you know what a compact
19 disks is?

20 A. No.

21 Q. Have you ever utilized a compact
22 audio disk player?

23 A. The little cassette.

24 Q. So right after cassettes --

25 A. Right.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Q. -- for instance, there was
3 Batamax, VHS, eventually we got to the DVD
4 which was a disk.

5 A. Right.

6 Q. In the midst of the technological
7 revolution, cassette revolution, the cassette
8 tape was later transformed into a compact
9 disk, what's known as a CD ROM.

10 A. Right, okay.

11 Q. Have you ever received a CD
12 ROM --

13 A. I can't remember. I don't think
14 so.

15 Q. How is it that you first signed
16 up for AOL?

17 A. My wife did it all.

18 Q. Did your wife make the bluefin1
19 name?

20 A. No. I did.

21 Q. Why did you make it bluefin1?

22 A. Because at that time, I had a
23 license plate on my -- also bluefin1.

24 Q. When did you no longer have that
25 license plate number, bluefin1?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

71

1 R. SCORDINO

2 A. Forty years ago, fifty years ago,
3 four decades, five decades, maybe.

4 Q. What kind of car was it?

5 A. It was a blue Ram Charger.

6 Q. Is that a Dodge car?

7 A. Dodge.

8 Q. You said it was a blue Charger?

9 A. Blue Dodge.

10 Q. Do you remember the license
11 plate?

12 A. Bluefin1.

13 Q. It was registered in the State of
14 New York?

15 A. Yes.

16 Q. Do you still have that car?

17 A. No.

18 Q. When did you get rid of that car?

19 A. Late '70s, early '80s.

20 Q. Do you remember the year?

21 A. No.

22 Q. Why did you get rid of the car?

23 A. It was falling apart.

24 Q. To be clear, you mentioned
25 Trustee Kevin, Tony Davida, Jack Rafter.

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1 R. SCORDINO

2 Is there anyone else employed or
3 within the employ of Village of Babylon that
4 you played golf with?

5 A. Going back many years, Joel
6 Sikowitz I played with. He's our Village
7 attorney.

8 Q. Anyone else?

9 A. I think that's about it.

10 Q. Have you played golf with your
11 current Village attorney?

12 A. No. As a matter of fact, no.

13 Q. Did you ever play golf with
14 Robert Kinnier?

15 A. No, I don't believe so.

16 Q. What about his wife?

17 A. No.

18 Q. Do you know who Bob Kinnier is?

19 A. Yes.

20 Q. Who is Bob Kinnier?

21 A. I believe he's a resident, lives
22 on Wampum.

23 Q. What were the circumstances under
24 which you first met Bob Kinnier?

25 A. I believe I knew her as a

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 resident many years ago; and as recently as,
3 she is the first one that sent me a complaint
4 about some of the issue that were on Wampum.

5 Q. You said sent you a complaint
6 about some of the issues that were on Wampum.

7 How was that complaint sent to
8 you?

9 A. E-mail. I believe it was from
10 our workflow message I got.

11 Q. What, if anything, did you do in
12 response to that workflow message?

13 A. I checked her problem out.

14 Q. What was her problem?

15 A. There were a lot of cars parked
16 on Wampum, she couldn't get out of her
17 driveway.

18 Q. You say there was a workflow
19 message --

20 A. Yes.

21 Q. -- did you speak to her?

22 A. Yes, I called her. And she
23 called me about it. I told her it was being
24 taken care of.

25 Q. What did you do to take care of

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 it?

3 A. Talked to the resident that was
4 blocking her driveway.

5 Q. Who was that residence?

6 A. It was Mike Domingo, I believe it
7 was.

8 Q. What did you do?

9 A. He moved the cars and he moved
10 the basketball court.

11 Q. How do you get access to the
12 workflow message.

13 A. Through my Village computer.

14 Q. It was sent to the Village of
15 Babylon?

16 A. Yes.

17 Q. When you say, the workflow
18 message, is that sent to your electronic mail
19 address, another account?

20 A. Sent to my account which is
21 mayor@VillageofBabylonNY.gov.

22 Q. Your e-mail account?

23 A. Right.

24 Q. Have you ever had access to
25 electronic mail address DANABT1910@aol.com?

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SCORDINO, RALPH A. - December 5, 2019

75

1 R. SCORDINO

2 A. No.

3 Q. Do you know whose electronic mail
4 address that is?

5 A. I believe it's my daughter's, if
6 I'm not mistaken.

7 Q. I asked you earlier if you had
8 any opportunity to correspond with your
9 daughter by electronic mail.

10 A. Um-hum.

11 Q. Have you had the opportunity to
12 correspond with your daughter by electronic
13 mail?

14 MR. TOSCA: Objection.

15 You can answer.

16 A. What do you mean correspond? She
17 sends me something, I don't really because
18 correspond, if she's sending something to me,
19 I usually just call her.

20 Q. I don't want you to say something
21 that you might not have done.

22 You know how to send an
23 electronic message, right?

24 A. Yes.

25 Q. You send it by e-mail, correct?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

76

1 R. SCORDINO

2 A. Yes.

3 Q. You receive e-mails, right?

4 A. Right.

5 Q. Just like the one you received
6 from the Kinniers?

7 A. Right.

8 Q. In receiving such e-mails, you
9 have the ability to respond to those e-mails,
10 right?

11 A. Yeah.

12 Q. Have you received and have you
13 responded to e-mails sent by you daughter?

14 A. I usually don't respond. I
15 usually never respond or do it very, one
16 sentence, being taken care of, I'm looking
17 into it. That's it.

18 Q. So the answer is yes, you have
19 replied to your daughter's e-mail?

20 A. No. I said sometimes. I'm not
21 sure if I did or not to her.

22 Q. Have you ever sent an e-mail back
23 to your daughter?

24 A. I can't remember.

25 Q. You don't know?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

77

1 R. SCORDINO

2 A. I can't remember.

3 Q. Is there anything that prevents
4 you from recalling that?

5 A. No.

6 MR. TOSCA: Objection.

7 Q. What about as the mayor of the
8 Village of Babylon, can you remember ever
9 responding to e-mail?

10 A. I just told you two seconds ago.

11 Q. Tell me, what did you --

12 A. The one from Kinnier --

13 Q. You responded to the e-mail?

14 A. I guess I did, yeah.

15 Q. I'm not asking you to guess.

16 A. You're asking me questions over
17 and over again. I resent the fact that you're
18 doing that. It's just as my attorney just
19 said, it's harassing, okay, trickery and
20 I'm --

21 MR. TOSCA: We're going to take a
22 break.

23 Q. I'd just like an answer to that
24 question.

25 Did you --

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 A. I can't recall.

3 Q. You can't recall if you responded
4 to Mr. Kinnier?

5 A. I can't recall.

6 Q. Is there anything --

7 A. Can't recall.

8 MR. MORRIS: Time is 11:24.

9 (Whereupon, a recess was taken
10 from 11:25 a.m. to 11:30 a.m.)

11 MR. MORRIS: 11:30, we're back on
12 the record.

13 Q. Mr. Scordino, did you discuss
14 your testimony --

15 MR. TOSCA: Objection.

16 A. No.

17 Q. Mr. Scordino, with whom do you
18 regularly play golf?

19 A. Usually with deputy mayor Kevin
20 Muldowney and Trustee Tony Davida.

21 Q. How often does that occur?

22 A. Once or twice during the summer
23 months, a week.

24 Q. Once or twice a week?

25 A. Um-hum.

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 Q. Is there a regular day in which
3 you play golf.

4 A. Tuesdays, Wednesdays.

5 Q. Just the three of you?

6 A. Sometimes. Sometime we have
7 other people.

8 Q. What other people do you bring
9 along golfing?

10 A. Friends periodically.

11 Q. What are the names of those
12 persons?

13 A. Well, Bruce Huminik, friends of
14 deputy mayor Kevin Muldowney or friends of
15 Tony Davida. They vary.

16 Q. Can I ask you for the name of
17 these people, please?

18 A. Those ar ones I just recall right
19 now.

20 Q. Anyone else that you recall right
21 now?

22 A. No. That's about it.

23 Q. Anything that would refresh your
24 recollection?

25 A. Refresh my recollection, no.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

80

1 R. SCORDINO

2 Those are the people I remember right now.

3 Q. When you access this golf club,
4 is there a check-in process?

5 A. Yes.

6 Q. What is the check-in process?

7 A. Check in at the clubhouse, who
8 the foursome are, sometimes there are
9 fill-ins.

10 Q. When you say foursome, I
11 apologize, I don't play golf, can you play
12 golf with three people?

13 A. Yeah, sometimes.

14 Q. When you say check-in
15 foursomes --

16 A. If there is somebody that's
17 single, they usually put that person with the
18 foursomes.

19 Q. Who is that they?

20 A. Pardon me.

21 Q. Who is the "they" to whom you're
22 referring?

23 A. That day, Tuesday, that we play
24 golf.

25 Q. I'm saying, the they, they

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 usually put --

3 A. The person at the desk organizes
4 the foursome.

5 Q. How did they do that? Do they do
6 that with a paper or --

7 A. Paper.

8 Q. You have to register as a
9 foursome?

10 A. Sometimes. Sometime you can go
11 out with a threesome, sometimes you can go out
12 with a twosome.

13 Q. Can you go out with two twosomes?

14 A. Yes.

15 Q. When you do that, it's
16 registered, it's put on a piece of paper and
17 handed to you?

18 A. Not handed to you, they keep
19 records.

20 Q. Those records, who keeps those
21 records?

22 A. Trustee, the deputy mayor Kevin
23 Muldowney, he's the overseer of the golf
24 course.

25 Q. You go to his golf course

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 essentially?

3 MR. TOSCA: Objection.

4 A. No, Village golf course.

5 Q. The Village keeps records of who
6 plays golf together?

7 A. Yeah, I believe they do.

8 Q. Do you maintain a locker at this
9 golf course?

10 A. No.

11 Q. Do you have any of your property
12 at this golf course?

13 A. No.

14 Q. Who pays for your membership in
15 the golf course?

16 A. Me.

17 Q. Is the money taken from your
18 paycheck, do you pay it out of a bank account,
19 or something else?

20 A. I pay cash for it.

21 Q. To whom do you give the cash?

22 A. To the person who is putting the
23 foursomes together.

24 Q. Is that the same person, a
25 different person?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

83

1 R. SCORDINO

2 A. Sometimes. It varies. There is
3 a number of employees that work there.

4 Q. Do you know the names of the
5 employees that organize such foursomes?

6 A. No.

7 Q. DANABT1910@Aol.com is your
8 daughter's electronic e-mail address?

9 A. I believe it is.

10 Q. Was that an electronic mail
11 address that you created for your daughter?

12 MR. TOSCA: Objection.

13 A. No.

14 Q. Did you ever pay for your
15 daughter's access to America Online?

16 A. No.

17 MR. TOSCA: Objection.

18 Q. You said earlier that you reside
19 at 89 Washington Avenue, Babylon, New York
20 11702; is that right, sir?

21 A. Correct.

22 Q. How long have you resided there?

23 A. About 40 years.

24 Q. Do you recall the year in which
25 you purchased that residence?

John Lepper v. Village of Babylon
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84

1 R. SCORDINO

2 A. No, I can't recall.

3 Q. Is that a residence you own?

4 A. Yes.

5 Q. Do you own it with anybody else?

6 A. No.

7 Q. Do you reside at that location

8 alone or with others?

9 A. With my wife.

10 Q. Anyone else?

11 A. No. Lola, my dog.

12 Q. Okay. What kind of dog is Lola?

13 A. English cocker.

14 Q. How long have you had Lola, the

15 dog?

16 A. Ten years.

17 Q. Aside from Lola, the dog, did

18 anyone else reside at that location besides

19 you and your wife?

20 A. My son and daughter.

21 Q. What year did they reside at such

22 location?

23 A. I believe my daughter was four

24 and my son was one.

25 Q. Okay.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

85

1 R. SCORDINO

2 When you moved in; is that right?

3 A. Yes.

4 Q. You said that was about 40 years
5 ago?

6 A. Um-hum.

7 Q. Were you employed when you moved
8 into the residence?

9 A. Yes.

10 Q. By whom were you employed?

11 MR. TOSCA: Objection.

12 You can answer.

13 A. West Islip School District.

14 Q. In what capacity were you
15 employed at West Islip School District?

16 A. Physical education teacher.

17 Q. When did you first start working
18 a physical education teacher in West Islip?

19 A. 1971.

20 Q. You purchased the home about
21 1979; is that right?

22 A. Um-hum.

23 Q. How long did you maintain that
24 employment as physical education teacher at
25 the West Islip school District?

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86

1 R. SCORDINO

2 A. I've been retired, I believe,
3 14 years now.

4 Q. Did you maintain any other
5 employment when you resided at 89 Washington
6 Street in Babylon?

7 A. Yes with the Town, Town of
8 Babylon.

9 Q. You said the Town, sir?

10 A. Right.

11 Q. What position did you hold within
12 the Town of Babylon?

13 A. Recreations specialist.

14 Q. Is that a Civil Service position?

15 A. No.

16 Q. How did you obtain the
17 recreations specialist position?

18 A. Applied for it.

19 Q. With whom did you apply?

20 A. Town of Babylon.

21 Q. Aside from physical education
22 teacher and recreational specialist, did you
23 maintain any other employment?

24 A. I also was a professional at the
25 Long Island Institute teaching the physical

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

87

1 R. SCORDINO

2 education teachers adaptive physical
3 education.

4 Q. Were you a full-time professor or
5 part-time?

6 A. It was adjunct.

7 Q. How long were you adjunct-ing?

8 A. Probably about seven years.

9 Q. You mentioned physical education
10 teacher, recreational specialist, and
11 professor at Long Island University.

12 Did you maintain any other
13 employment --

14 A. No.

15 Q. -- when you resided at
16 89 Washington Street?

17 A. No.

18 Q. Did you own any businesses?

19 A. No.

20 Q. Are you familiar with an address
21 173 Bernas, B-E-R-N-A-S, Road --

22 A. Yes.

23 Q. -- Cohecton, New York 12726?

24 A. Um-hum.

25 Q. What is that address?

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1 R. SCORDINO

2 A. That's my second house.

3 Q. Is that the house to which you
4 referred was in Sullivan County?

5 A. Um-hum.

6 Q. Anyone reside at that house
7 currently?

8 A. No. It's nobody there.

9 Q. When did you purchase that
10 residence?

11 A. Six years ago.

12 Q. How did you purchase the
13 residence?

14 MR. TOSCA: Objection.

15 A. How did I purchase it?

16 Q. Was that a sale, auction,
17 foreclosure?

18 A. No. I had it built. I had the
19 property for many years, and I had it built.

20 Q. In other words, you owned the
21 land and six years ago, you had it built?

22 A. Right.

23 Q. Which is why I asked the question
24 in such a manner.

25 How long did you own the land on

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 which 173 Bernas Road sits?

3 A. Early '80s, I believe.

4 Q. When you say early '80s, do you
5 know the year in which you acquired such land?

6 A. It was done in separate things.
7 It was in the early '80, I bought 12 acres,
8 then I bought another 15 acres. I'm not sure
9 of the date.

10 Q. How did you purchase that
11 property?

12 MR. TOSCA: Objection.
13 You can answer.

14 A. Bought it.

15 Q. Cash, mortgage?

16 A. Cash.

17 Q. Private purchaser?

18 A. Um-hum.

19 Q. You didn't buy it at an auction?

20 A. No.

21 Q. And you maintained that property
22 from the 1980s until about six years ago?

23 MR. TOSCA: Objection.

24 A. Yes.

25 Q. You said you had a house built on

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 that property?

3 A. Um-hum.

4 Q. How did you go about doing that,
5 sir?

6 A. I bought it from a company Beaver
7 Mountain, and then I had to select a builder
8 and they took care of it. It was like a kit,
9 they have a kit and they put it together.

10 Q. Do you remember the name of the
11 builder selected?

12 A. Oh geez, I don't remember his
13 first name. My best guess is Bill, I'm not a
14 hundred percent sure. He was from up there.

15 Q. When you say up there, he was up
16 there?

17 A. I think he was from Pennsylvania.
18 It's very close to Pennsylvania where the
19 house is.

20 Q. Bill built the house; is that
21 right?

22 A. Yes.

23 Q. Did he use an architect, anything
24 like that?

25 A. Beaver Mountain does the

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 architect, they give them the plans. We
3 designed it with Beaver Mountain.

4 Q. What about governmental
5 compliance, who was responsible for that?

6 A. The builder.

7 MR. TOSCA: Objection.

8 Q. Did you oversee what the builder
9 did?

10 A. My wife did. I was busy with
11 Sandy.

12 Q. When you say Sandy, are you
13 referring to Super Storm?

14 A. Yes.

15 Q. That was six years ago?

16 A. Going on our seventh year.

17 Q. When you purchased that home from
18 the builder, did you take out a mortgage?

19 A. No.

20 Q. How did you purchase the
21 property?

22 MR. TOSCA: Objection.

23 Don't answer the question.

24 MR. MORRIS: Counsel, are you
25 telling him not to answer?

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 MR. TOSCA: Yes.

3 MR. MORRIS: On what grounds?

4 MR. TOSCA: Grounds of privilege.

5 MR. MORRIS: You're telling me

6 where he purchased the property is

7 subject to attorney/client privilege?

8 MR. TOSCA: Could you repeat?

9 MR. MORRIS: Hold on, no.

10 Are you asserting attorney/client

11 privilege?

12 MR. TOSCA: I need to know what

13 you said so I can respond.

14 Go ahead.

15 MR. MORRIS: Counselor, stop.

16 MR. TOSCA: No. Don't stop, I'm

17 going to ask the question --

18 MR. MORRIS: I'm going to

19 withdraw the question.

20 MR. TOSCA: Okay.

21 Q. Sir, did you take a mortgage out

22 when you purchased the property from the

23 builder?

24 MR. TOSCA: Objection.

25 Don't answer the question.

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93

1 R. SCORDINO

2 Q. Sir, did you seek an attorney
3 when you purchased the property from the
4 builder?

5 MR. TOSCA: Objection.

6 You can answer.

7 A. No.

8 Q. Did you speak to the attorney on
9 your left when you purchased that property?

10 A. No.

11 MR. TOSCA: Objection.

12 You can answer.

13 Q. What about Mr. Glass?

14 A. No.

15 Q. What about the attorney before
16 Mr. Glass?

17 A. No.

18 Q. Did you speak to any attorney
19 before you bought that property?

20 A. No. My wife is very smart.

21 Q. Is your wife an attorney?

22 A. No, but she's smart, very smart.

23 Q. Did you use an attorney in the
24 building of the property?

25 A. No.

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1 R. SCORDINO

2 MR. TOSCA: Objection.

3 You can answer.

4 Q. So you paid for the property,
5 right?

6 A. Um-hum.

7 Q. How did you pay for the property?

8 MR. TOSCA: Objection.

9 Don't answer the question.

10 MR. MORRIS: Counsel, you're
11 asserting privilege on the basis of how
12 he paid?

13 MR. TOSCA: Counsel, I'm telling
14 the witness not to answer the question.
15 I'm asserting the privilege.

16 Q. Do you have any real estate
17 dealings, sir?

18 A. Me?

19 MR. TOSCA: Objection.

20 You can answer over objection.

21 A. Absolutely not.

22 Q. Did you ever consult an attorney
23 for real estate?

24 MR. TOSCA: Objection.

25 You can answer.

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1 R. SCORDINO

2 A. When we purchased our house,
3 yeah, our house on 89 Washington.

4 Q. Do you have any corporations?

5 A. No.

6 Q. What about a business, do you own
7 any business?

8 A. No.

9 Q. Do you have any partial ownership
10 in a business?

11 A. No.

12 Q. In ascertaining the building on
13 173 Bernas Road, is there a deed that exists
14 for that property?

15 A. Yes.

16 Q. Who is on the deed?

17 A. My wife and I.

18 Q. Anyone else?

19 A. No.

20 Q. Who prepared that deed?

21 MR. TOSCA: Objection.

22 You can answer over objection.

23 A. I have no idea. I guess the
24 County did, you know.

25 Q. Is the property encumbered at

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 all?

3 MR. TOSCA: Objection.

4 You can answer.

5 A. What do you mean by encumbered?

6 Q. Do you owe any money on it?

7 A. No.

8 Q. Why not?

9 MR. TOSCA: Objection.

10 You can answer over objection.

11 A. Because we had the cash to do it.

12 Q. You paid --

13 A. We saved and paid cash.

14 Q. You paid cash, right?

15 A. Yes.

16 Q. Any reason that an attorney would

17 object to such a question?

18 MR. TOSCA: Objection.

19 Don't answer that question.

20 It calls for a legal conclusion.

21 Q. You paid cash for the building

22 that exists at 173 Bernas Road?

23 MR. TOSCA: Objection.

24 Don't answer the question.

25 RL MR. MORRIS: Mark that for a

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 ruling.

3 Q. Sir, do you maintain one bank
4 account, multiple bank accounts, something
5 else?

6 MR. TOSCA: Objection.

7 You can answer.

8 A. My wife takes care of all the
9 banking.

10 Q. Are you responsible for the
11 management of money within the Village of
12 Babylon at all?

13 A. Yes, absolutely.

14 Q. Did you use any Village of
15 Babylon funds in the purchase --

16 A. Absolutely not.

17 MR. TOSCA: Let him finish his
18 question.

19 Q. Just to be clear, no Village of
20 Babylon funds were expended in the purchase of
21 173 Bernas Road, correct?

22 MR. TOSCA: Objection.

23 You can answer over objection.

24 A. No.

25 Q. Sir, you were busy dealing with

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1 R. SCORDINO

2 Hurricane Sandy at the time, correct?

3 A. Yes.

4 Q. Did the Village of Babylon
5 receive any financial assistance from any
6 government entity?

7 A. Yes.

8 Q. From what entity did it receive
9 assistance?

10 A. New York Rising.

11 Q. Anything else?

12 A. Yes, that's it. New York Rising.

13 Q. In your receipt of New York
14 Rising money, you didn't spend any of that
15 New York Rising money on 173 Bernas Road,
16 correct?

17 A. No.

18 MR. TOSCA: Objection.

19 You can answer over objection.

20 A. Voucher, no.

21 Q. You didn't take the money out in
22 a duffle bag and pay for the house, did you?

23 MR. TOSCA: Objection.

24 Hold on.

25 MR. MORRIS: Objection. Hold on?

John Lepper v. Village of Babylon
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99

1 R. SCORDINO

2 MR. TOSCA: Yes. Okay, you're
3 not asking the witness --

4 MR. MORRIS: Please note the
5 time.

6 MR. TOSCA: You can answer that
7 question.

8 Repeat the question.

9 (Whereupon, the record was read
10 by the reporter.)

11 Q. Seems like a pretty simple
12 question.

13 A. A ridiculous question, but, you
14 know.

15 Q. I'm just --

16 A. Absolutely not.

17 Q. Did you pay in check?

18 A. No. With a duffle bag. Really.
19 Come on.

20 Q. I'm just trying the ascertain why
21 the attorney would assert attorney/client --

22 A. I told you why --

23 MR. TOSCA: You didn't tell him
24 why.

25 It's a legal conclusion. The

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

100

1 R. SCORDINO

2 attorney has a legal reason for reciting
3 it.

4 RL MR. MORRIS: We'll mark it for a
5 ruling, and I hope to hear what that is
6 at some point.

7 Q. From what period of time did you
8 reside at 173 Bernas Road, Cochection?

9 A. Reside.

10 Q. Um-hum.

11 A. I visit. I don't reside there, I
12 visit there. My main house where I sleep is
13 89 Washington Street.

14 Q. How often do you visit there?

15 A. About ten, average about ten days
16 a month.

17 Q. So you own this home and ten days
18 a month, you're in that home; is that right?

19 A. Yeah.

20 Q. What about the --

21 A. Average.

22 Q. What about the Fire Island house,
23 how long are you there?

24 MR. TOSCA: Objection.

25 A. About three days a week for eight

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

101

1 R. SCORDINO

2 weeks in August, July and August.

3 Q. That's when you are the director
4 of the camp that you mentioned earlier?

5 A. Um-hum.

6 Q. Before we return to that at a
7 later time, do you receive pay for your work
8 as the director of the camp?

9 A. Yes.

10 Q. It's a part-time job, right?

11 A. Yes.

12 Q. How is it that you travel to
13 173 Bernas Road, Cohecton, New York?

14 A. Right. How do I travel? By car.

15 Q. Okay. What car do you utilize?

16 A. The car that's given to me
17 through the Village.

18 Q. When you say a car that's given
19 to you by the Village, what car are you
20 referring to, sir?

21 A. The car that goes along with the
22 mayor's job.

23 Q. What car is that, sir?

24 A. Tahoe.

25 Q. A Chevy Tahoe?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

102

1 R. SCORDINO

2 A. Yes.

3 Q. What year is that Tahoe?

4 A. 2009, I believe.

5 Q. So that is fairly recent car?

6 A. Every four years.

7 Q. When you say, every four years,

8 to what are you referring?

9 A. When the mayor gets elected, the
10 job goes along with a car to use.

11 Q. When you say the job goes along
12 with a car, is that a leased car or purchased
13 car?

14 A. The Village purchases it.

15 Q. When you say the Village
16 purchases it, the Village purchases a Tahoe
17 every four years?

18 A. If that's what the mayor wants.
19 I had the Suburban one year, a Tahoe one year.

20 Q. You choose the car?

21 A. Yeah.

22 Q. And was there any approval
23 required for the car of your choosing?

24 A. Approval, no. Usually it goes
25 with the appointment as the mayor.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

103

1 R. SCORDINO

2 Q. So as the mayor, you get to
3 choose whatever car you want?

4 A. Yes.

5 Q. You said every four years.

6 How many cars has the Village of
7 Babylon purchased for you over the year as
8 mayor?

9 A. Every four years.

10 Q. How many cars have you had?

11 A. This will be my fifth one.

12 Q. How long have you been the mayor
13 of the Village of Babylon?

14 A. I think it's going to be 18 years
15 now.

16 Q. When you say your fifth car, each
17 car is titled in your name; is that right?

18 A. Village.

19 Q. Who pays the insurance for these
20 cars?

21 A. Village.

22 Q. What about the registration?

23 A. Village.

24 Q. The car is registered to the
25 Village?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

104

1 R. SCORDINO

2 A. Yes.

3 Q. What was the first car of which
4 the Village of Babylon purchased for you as
5 mayor of the Village of Babylon?

6 A. I believe it was a Suburban.

7 Q. Do you know the make of the
8 Suburban?

9 A. Chevy.

10 Q. Do you remember the year?

11 A. 2002.

12 Q. Do you remember the color of that
13 car?

14 A. Blue.

15 Q. Blue Suburban, like bluefin tuna?

16 A. Um-hum.

17 MR. TOSCA: Objection.

18 A. Darker.

19 Q. Like your suit?

20 A. Darker.

21 Q. More yellowfin than bigeye?

22 A. Right.

23 MR. TOSCA: Objection.

24 Q. That blue Suburban, where did you
25 park it at the end of the night?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

105

1 R. SCORDINO

2 A. My house.

3 Q. Who paid for its gas?

4 A. The Village did. If I was using
5 it for personal use, I would pay for the gas.

6 Q. Do you keep vouchers, receipts,
7 or some other method of determining --

8 A. There is a record of how many
9 times you're allowed to get a gas allotment.

10 Q. Eventually, that 2002 blue
11 Suburban, you had another car purchased for
12 you by the Village of Babylon, correct?

13 A. Four years later.

14 Q. What happened once that new car
15 was purchased by the Village of Babylon four
16 years later?

17 MR. TOSCA: Objection to form.

18 You can answer.

19 A. Probably traded.

20 Q. When you say probably traded, do
21 you know what occurred to that car?

22 A. I think it was traded in. I
23 don't take care of that. It's usually the
24 Superintendent of Highways takes care of that.

25 Q. Who is the Superintendent of

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

106

1 R. SCORDINO

2 Highways?

3 A. Skip Gardener.

4 Q. Is Skip a nickname?

5 A. Charles Skip Gardener.

6 Q. How long has he maintained that
7 position?

8 A. Over 50 years.

9 Q. He was there before you were
10 mayor of the Village of Babylon; is that
11 right?

12 A. That is correct.

13 Q. Did you trade in the 2002
14 Suburban?

15 A. Did I trade it in? No, it's all
16 taken care of by Skip Gardener. He traded it.

17 Q. Did he receive the proceeds of
18 the 2002 trade-in?

19 A. I have no idea. You have the
20 check with the treasurer.

21 Q. So there's records?

22 A. Yes.

23 Q. What was car the you got in 2006;
24 is that right?

25 A. I believe it was a Suburban also.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

107

1 R. SCORDINO

2 Q. Was it --

3 Sorry. I apologize. I didn't
4 mean to interrupt you.

5 A. I'm waiting for you.

6 Q. Was it also blue?

7 A. Yes.

8 Q. Was that a 2006 Suburban?

9 A. Right.

10 Q. You were reelected that year,
11 correct?

12 A. Yes.

13 Q. What was your salary as mayor of
14 the Village of Babylon in 2002?

15 A. 15,000.

16 Q. Aside from the vehicle and the
17 gas allotments, did you receive any other
18 economic benefit?

19 A. Yes. We get health insurance
20 from the Village.

21 Q. Anything else?

22 A. No.

23 Q. In 2006, you purchased a
24 Suburban?

25 A. I didn't purchase it. The

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

108

1 R. SCORDINO

2 Village purchases it.

3 MR. MORRIS: Let me withdraw
4 that.

5 Q. In 2006, the Suburban was
6 purchased by the Village of Babylon on behalf
7 of you, the mayor, right?

8 A. Right.

9 Q. Do you know where the car was
10 purchased from?

11 A. I believe it's off the State bid.

12 Q. Is that the same thing as the
13 2002 Suburban?

14 A. State bid.

15 Q. Eventually there came a time you
16 no longer drove the 2006 Suburban?

17 A. It's traded in or it might be
18 added to our fleet also.

19 Q. Did you receive a special license
20 plate?

21 A. No.

22 Q. That 2006 Suburban was eventually
23 replaced by another car purchased by the
24 Village of Babylon?

25 A. Right.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

109

1 R. SCORDINO

2 Q. What car did you purchase and in
3 what year?

4 A. Tahoe.

5 MR. TOSCA: Objection.

6 Q. That was the Village of Babylon
7 that purchased the Tahoe on your behalf?

8 A. Right.

9 Q. Do you know what year that Tahoe
10 was?

11 A. The year was probably right after
12 the next election.

13 Q. 2010?

14 A. 2010.

15 Q. Every four years?

16 A. Right.

17 Q. After the 2010 to Tahoe --

18 A. This isn't --

19 Go on.

20 Q. I'm sorry.

21 A. Getting the car is nothing new,
22 every mayor before me also had the privilege
23 of getting their own car, as well as the
24 chief, okay, so this is nothing new. This is
25 a Ralph Scordino, this is procedure that was

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

110

1 R. SCORDINO

2 done before I came and became mayor. When I
3 took over in 2002, the mayor before us, he
4 also had, I believe, a car too, okay, so this
5 is --

6 Q. What car --

7 A. He had a different car. He had,
8 I believe, I drove that car for many years too
9 because -- and it wasn't good in snow because
10 I go out in the snow, so I need a heavier car,
11 I need a four-wheel drive car so that I don't
12 end up in the woods somewhere when I inspect
13 the roads on a snowstorm.

14 Q. When you say inspecting the
15 roads, can you describe to what you're
16 referring?

17 A. Snowstorms, that's part of my
18 job.

19 Q. When you say part of your job --

20 A. As mayor.

21 Q. You inspect the roads?

22 A. Um-hum.

23 Q. Anything else?

24 MR. TOSCA: Objection.

25 A. I travel all over the Village. I

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

111

1 R. SCORDINO

2 look, I look -- meet residents, talk to
3 residents.

4 Q. You oversee the entire Village.

5 A. The entire Village.

6 Q. Do you oversee all the
7 departments within the Village of Babylon?

8 A. I oversee -- yes, I'm responsible
9 for them also.

10 Q. When you say, meet the residents,
11 can you describe what you mean?

12 A. Sometimes residents call me over
13 to talk to them.

14 Q. When you say call you, how --

15 A. Wave me down. Wave at me, come
16 on over, talk to me. How is everything going,
17 conversation.

18 Q. This is when you're in the
19 Village of Babylon purchased vehicle?

20 A. Yes.

21 Q. Prior to 2002, before you were
22 mayor of Village of Babylon, did you have a
23 personal vehicle?

24 A. No, I had my own vehicle.

25 Q. What vehicle was that?

John Lepper v. Village of Babylon
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112

1 R. SCORDINO

2 A. I believe I had a Suburban.

3 Q. That was not purchased for you by
4 the Village of Babylon, correct?

5 A. That is correct.

6 Q. That was not owned by a
7 municipality?

8 A. That was owned by me. It wasn't
9 blue, by the way, it was turquoise.

10 Q. Like the marlin?

11 A. Close, like a bluefish maybe.

12 Q. Have you ever had any accident
13 with a Village of Babylon vehicle?

14 MR. TOSCA: Objection.

15 You can answer.

16 A. Yeah. I've had one fender
17 bender, I think I did.

18 Q. Was that when you were working
19 for the Village of Babylon or were you doing
20 something else?

21 A. In the Village car it was the
22 Village car.

23 Q. Were you inspecting the roads
24 or --

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

113

1 R. SCORDINO

2 MR. TOSCA: Let me finish the
3 question.

4 THE WITNESS: Sorry.

5 MR. TOSCA: That's okay.

6 Q. When you said you meet residents,
7 you inspect the roads, you oversee the Village
8 of Babylon, is there anything else you do in
9 that car provided to you by the Village of
10 Babylon?

11 A. It's for any personal use also,
12 might go to the store, might visit my
13 daughter.

14 Q. After that 2010 Tahoe, did the
15 Village of Babylon purchase another vehicle
16 for the mayor, for you?

17 A. Yes.

18 Q. What vehicle was that?

19 A. Tahoe.

20 Q. Do you know the year of the new
21 Tahoe?

22 A. Probably 2011.

23 Q. 2011?

24 A. Right. Right after 2010, if
25 we're going in the same direction, every four

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

114

1 R. SCORDINO

2 years there is a new vehicle.

3 Q. So I'm thinking four years after
4 the 2010 is probably 2014?

5 A. Right. 2014.

6 Q. Was it a 2014 Tahoe?

7 A. Yes.

8 Q. What color was that 2014 Tahoe?

9 A. I think it was like a charcoal, I
10 believe.

11 Q. The registration for the charcoal
12 Tahoe was paid for by the Village of Babylon?

13 A. Um-hum.

14 Q. The insurance for that charcoal
15 Tahoe was paid for by the Village of Babylon.

16 A. Um-hum.

17 Q. When you say um-hum, is that yes?

18 A. Yes.

19 Q. When you say fender bender, which
20 vehicle had the fender bender?

21 A. I think it was that one, the gray
22 one or charcoal one.

23 Q. After that gray or charcoal
24 fender bender, did you have another vehicle?

25 A. Yes, another Tahoe.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

115

1 R. SCORDINO

2 Q. What color was that Tahoe?

3 A. Blue.

4 Q. What year was that Tahoe?

5 A. Right after the other one, we're
6 going in a sequence. That was the last one,
7 right?

8 Q. 2019, is that the new one?

9 A. Yeah.

10 Q. And in this 2019 Tahoe, is this
11 the same vehicle that you utilized to inspect
12 the road you mentioned and other thing?

13 A. Um-hum.

14 Q. You say, so you don't end up in
15 the woods, to what are you referring, sir?

16 A. Well, it gets very, very slippery
17 sometimes, and I believe the car that the
18 mayor had before us was a Buick, and it was
19 very, very light and it really was very unsafe
20 on snowy roads. I wanted to get a four-wheel
21 drive so I had it.

22 Q. Okay.

23 Sir, are you familiar with the
24 address 631 P.O. Box, Ocean Beach, New York?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

116

1 R. SCORDINO

2 Q. What is that address?

3 A. For the Ocean Beach Youth Group.

4 Q. When you say, that's for the

5 Ocean Beach Youth Group --

6 A. For mail there.

7 Q. When you say the mail there,

8 there is an address to which the camp would

9 receive mail?

10 A. Yes.

11 Q. Does anyone reside in that

12 location?

13 A. It's closed up for the summer.

14 Q. When it's not closed up, is that

15 the actual camp location?

16 A. Um-hum.

17 Q. How long is that camp?

18 A. It's the house. What are you

19 talking about, the P.O. Box, a P.O. Box is a

20 post office box.

21 Q. Is that associated with the

22 residence or the camp?

23 A. Camp.

24 Q. It's not a personal residence,

25 correct?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

117

1 R. SCORDINO

2 A. No, post office, Ocean Beach Post
3 Office.

4 Q. 631 P.O. Box is located there?

5 A. Yes.

6 Q. What are the months of operation
7 of such summer camp?

8 A. Usually the second week in June
9 to the second week in September.

10 Q. Are you familiar with 152 Cadman
11 Avenue, Babylon, New York 11702?

12 A. Yes.

13 Q. What is that address?

14 A. My parents' address.

15 Q. Have you resided at 152 Cadman
16 Avenue?

17 MR. TOSCA: Objection.

18 A. Yes.

19 Q. What years did you reside there?

20 A. I don't recall.

21 Q. Do you recall the decade?

22 A. I'd be guessing.

23 Q. I don't want you to guess, sir.

24 A. Hum.

25 Q. I don't want you to guess.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. No. I said I'd be guessing, that
3 means I don't want to.

4 Q. I didn't want you to.

5 Did you live at 152 Cadman
6 Avenue, Babylon, New York 11702 when you were
7 a teenager?

8 A. Yes.

9 Q. Did you live there when you were
10 married?

11 A. No.

12 Q. Did anyone else reside with you
13 at 152 Cadman Avenue, Babylon, New York when
14 you lived there?

15 A. Yes.

16 MR. TOSCA: Objection.

17 You can answer.

18 Q. With whom did you reside at that
19 location?

20 A. My brother.

21 Q. Anyone else?

22 A. That's it.

23 Q. And your parents, correct?

24 A. Um-hum.

25 Q. Anyone else?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. No.

3 Q. Do you recall when you moved out
4 of that location?

5 A. Right after I got married.

6 Q. Where did you move?

7 A. 22 Whaler's Cove.

8 Q. Do you know anyone at 26 Whalers
9 Cove?

10 A. 26 Whalers Cove. No.

11 Q. When you moved into 22 Whaler's
12 Cove, Babylon, New York 11702, did you
13 purchase it, did you lease, something else?

14 MR. TOSCA: Objection.

15 You can answer.

16 A. I believe we got a mortgage for
17 it. There was a mortgage.

18 Q. Who is we?

19 A. My wife and I.

20 Q. Did you purchase the property as
21 tenants by the entirety?

22 MR. TOSCA: Objection.

23 You can answer over the
24 objection.

25 A. I don't understand the question.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

120

1 R. SCORDINO

2 Q. Did you purchase the property as
3 a married couple or something else?

4 A. Married couple.

5 Q. Did you take a mortgage on this
6 property?

7 A. Yes.

8 Q. For what period of time did you
9 reside at 22 Whaler's Cove, Babylon, New York
10 11702?

11 A. I believe it was five years.

12 Q. Do you still own that property?

13 A. No.

14 Q. Did you sell that property?

15 A. Yes.

16 Q. When did you sell that property?

17 A. Four years after I purchased it.

18 Q. Who, aside from yourself and your
19 wife, resided at 22 Whaler's Cove?

20 A. That's it. My daughter.

21 Q. I'm sorry.

22 A. My daughter.

23 Q. Anyone else?

24 A. That's it.

25 Q. Did you have the dog?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

121

1 R. SCORDINO

2 A. No.

3 Q. By whom were you employed when
4 you lived at 22 Whaler's Cove, Babylon, New
5 York 11702?

6 A. West Islip School District, Town
7 of Babylon.

8 Q. Anyplace else?

9 A. That's it.

10 Q. When you sold 22 Whaler's Cove,
11 Babylon, New York 11702, to where did you
12 move?

13 A. 89 Washington Street.

14 Q. That's the home we mentioned
15 earlier, right?

16 A. Yes.

17 Q. Sir, did you ever maintain a
18 Facebook account?

19 A. Facebook account, no.

20 Q. Did anybody sign up for a
21 Facebook account on your behalf?

22 A. I don't believe so.

23 Q. Does the Village of Babylon
24 maintain a Facebook account?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

122

1 R. SCORDINO

2 Q. Whom monitors such Facebook
3 account?

4 A. One of our trustees.

5 Q. Who is that?

6 A. Mary Adams.

7 Q. Does anyone else have access to
8 the Village of Babylon Facebook account?

9 A. I believe -- no, it all goes
10 through Mary.

11 Q. What is the username for the
12 Village of Babylon Facebook account?

13 A. I don't know. I have no idea.

14 Q. Have you ever visited the Village
15 of Babylon --

16 A. No.

17 Q. -- Facebook page?

18 A. No.

19 MR. TOSCA: Let him finish the
20 question.

21 Q. Sir, have you ever worked at the
22 Village of Babylon Justice Court?

23 A. No.

24 Q. Have you ever owned any property
25 which we have not mentioned so far?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

123

1 R. SCORDINO

2 A. No other property.

3 Q. Are you a high school graduate?

4 A. Yes.

5 Q. When did you graduate from high
6 school?

7 A. 1967.

8 Q. From what high school did you
9 graduate?

10 A. Babylon High School.

11 Q. Where was that high school
12 located?

13 A. Babylon Village.

14 Q. Did you attend any institution of
15 higher learning after you graduated high
16 school?

17 A. Sure.

18 Q. What institution.

19 A. West Chester State University for
20 four years, Adelphi University got my Masters,
21 Brooklyn College, my SAS in administration.

22 Q. West Chester State University,
23 where was that located?

24 A. Pennsylvania, West Chester
25 Pennsylvania.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

124

1 R. SCORDINO

2 Q. For what periods did you attend?

3 A. '68 to '71.

4 Q. Did you receive any kind of
5 certificate of attendance?

6 A. Yes. BS.

7 Q. When you say BS, was that the
8 degree?

9 A. Bachelors, yes in health and
10 physical education.

11 Q. You said you later attended
12 Adelphi University?

13 A. Yes.

14 Q. For what periods did you attend?

15 A. Like '73, '74 to '78.

16 Q. Going back once again, were you
17 awarded any honors for your performance in
18 your period of attendance at West Chester
19 State University?

20 A. No.

21 Q. Did you participate in continuing
22 professional education programs since
23 graduating from West Chester State University
24 before you went to Adelphi University?

25 A. No.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

125

1 R. SCORDINO

2 Q. The Adelphi University, where was
3 it located?

4 A. Garden City.

5 Q. Did you receive any kind of
6 certificate of attendance?

7 A. Yes.

8 Q. What was that?

9 A. Masters in health and physical
10 education.

11 Q. Were you awarded any honors for
12 your period of attendance at Adelphi?

13 A. No.

14 Q. Did you participate in any
15 continuing professional education programs --

16 A. No.

17 Q. -- since graduating from Adelphi
18 from?

19 A. No.

20 Q. After Adelphi University, you
21 attended Brooklyn College, sir?

22 A. Hum.

23 Q. Was that a yes?

24 A. I didn't hear the question.

25 Q. I asked if after you attended

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Adelphi University, you attended Brooklyn
3 College?

4 A. Not right after. I believe it
5 was in the late '80s. '83 to '86.

6 Q. Did you receive any kind of
7 certificate of attendance?

8 A. Yeah, SAS.

9 Q. Were you awarded any honors for
10 your performance?

11 A. No.

12 Q. Did you participate in continuing
13 education programs since graduating from
14 Brooklyn College?

15 A. No.

16 Q. Do you hold any other license
17 aside from a driver's license?

18 A. I have a pistol license to carry.

19 Q. What state do you hold that
20 pistol carry license?

21 A. Suffolk County, New York.

22 Q. When did you first obtain that
23 pistol carry license?

24 A. Two years ago.

25 Q. Why did you on obtain the pistol

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1 R. SCORDINO

2 carry license?

3 MR. TOSCA: Objection.

4 You can answer over objection.

5 A. Because number 1, I felt that to
6 have a carry license, one of the examples
7 putting in there, there's a lot of money that
8 go in and out of Babylon Village, and also,
9 I'm a sportsman.

10 Q. When you say sportsman, to what
11 are you referring?

12 A. Sportsman, it's part of the
13 license, sportsman license.

14 Q. Have you ever shot an animal with
15 a carry license permit?

16 A. No.

17 Q. Have you ever been hunting
18 before?

19 A. Yes.

20 Q. Have you ever shot an animal
21 before?

22 A. Yes.

23 Q. What have you shot?

24 A. Deer.

25 Q. Anything else?

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1 R. SCORDINO

2 MR. TOSCA: Objection.

3 You can answer.

4 A. That's it.

5 Q. The weapon to which you shot a
6 deer with, was that a weapon that you can
7 carry on your person?

8 A. No.

9 Q. You said there many reasons why
10 you obtained a carry license, one was there
11 was a lot of money in and out of Babylon.

12 What were the other reasons, sir?

13 A. Security purposes, people come in
14 and out of Village Hall, that was one of
15 reasons, one of the criteria. You, to get
16 interviewed, took about eighteen months to get
17 the carry license. They scrutinize
18 everything, Suffolk County Police.

19 Q. Was there a particular police
20 officer or sergeant or person within the
21 Suffolk Police to whom scrutinized your --

22 A. Yes.

23 Q. Who was that person?

24 A. I can't recall who it was.

25 Q. Was it a man or woman?

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 A. Man.

3 Q. What is the gun to which you have
4 a carry license for?

5 A. Glock 42 and a Ruger 22.

6 Q. You said there's a lot of money
7 in and out of the Town of Babylon, can you
8 explain what you mean?

9 A. Treasurer's office is upstairs
10 and court system downstairs.

11 Q. When you say a lot of money, are
12 you referring to cash?

13 A. Cash, tickets, cash from the
14 tickets, checks downstairs for permits, down
15 in the Village clerk's office.

16 Q. Anything else, sir?

17 A. That's about it.

18 Q. You say checks for permits in the
19 Clerk's office, to what are you referring?

20 A. Landscape permits, parking
21 permits. Always we have taxes that are paid
22 there.

23 Q. So you recently applied for this
24 pistol carry license?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

130

1 R. SCORDINO

2 Q. But yet you have been the mayor
3 for nearly two decades?

4 A. Um-hum.

5 Q. Why did you apply two to three
6 year ago as opposed to 20 years ago?

7 MR. TOSCA: Objection to form.

8 You can answer.

9 A. I think our society has changed a
10 little bit.

11 Q. Can you explain?

12 A. I think you have a lot of people
13 that are -- we don't know about -- that are on
14 the streets, a lot of people come into our
15 village that are either on drugs or liquor,
16 sometimes it's disheartening to see this, you
17 know, you have people at the railroad station,
18 it's different society today.

19 Q. Anymore incidents that made you
20 apply for your carry license?

21 A. No.

22 Q. You say drugs and liquor, people
23 we don't know about.

24 Can you explain?

25 A. We have people to our Village

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131

1 R. SCORDINO

2 Hall at some of our meetings that are
3 definitely under the influence of alcohol.

4 Q. Is it against the law to come to
5 a Village Hall meeting under the influence of
6 alcohol?

7 A. Well, if they know how to --

8 MR. TOSCA: Objection.

9 You can answer.

10 A. If they know how to conduct
11 themselves. Sometime they get out of hand.

12 Q. Is there any incident of which
13 you can describe or recall for someone getting
14 out of hand at the Village of Babylon Village
15 Hall?

16 A. No.

17 Q. There's not one incident?

18 A. No.

19 Q. Are there many incidents?

20 A. I would say maybe in a six-month
21 period, you get one or two.

22 Q. Have you ever had to call the
23 police because of those incidents?

24 A. We had them on standby.

25 Q. Sir, have you ever had to call

John Lepper v. Village of Babylon
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132

1 R. SCORDINO

2 the police because of one of these incidents?

3 A. Yes.

4 Q. When did you call the police?

5 A. I think last year it was. Can't
6 remember the exact date.

7 Q. Aside from last year that you
8 can't recall the exact date, have you ever had
9 the opportunity to call the police otherwise?

10 A. Yes, we have.

11 Q. When did you do that?

12 A. Exact date, I don't know the
13 exact date. I can remember we did call them
14 for a disturbance in the Village Hall.

15 Q. Do you remember the month and the
16 year, sir?

17 A. No.

18 Q. When you say disturbance in
19 Village Hall, in your capacity as mayor of the
20 Village of Babylon, what, if anything, other
21 than disturbance in Village Hall, have you
22 called the police for?

23 MR. TOSCA: Objection.

24 You can answer over objection.

25 A. That's about it.

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SCORDINO, RALPH A. - December 5, 2019

133

1 R. SCORDINO

2 Q. You said drugs, sir --

3 A. Well, you don't know. You don't
4 know if they're on drugs but that act kind of
5 peculiar.

6 Q. You're the mayor of the Village
7 of Babylon.

8 Are there drugs within the
9 Village of Babylon?

10 A. Oh, yeah.

11 Q. What drugs are you referring to?

12 A. Anything. You know, people are
13 using drugs all over Suffolk County. We're
14 not immune from it.

15 Q. In the past two years, you've
16 applied for a carry license?

17 A. Um-hum.

18 Q. Is there any particular drug
19 which has changed the past 20 years?

20 A. We do have an opioid epidemic
21 right here in Suffolk County, so much that
22 we're even, I entered into a lawsuit against
23 opioid manufacturers with all the mayors, the
24 33 mayors in Suffolk County. There is a
25 problem, there's not a secret to it.

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134

1 R. SCORDINO

2 Q. How did you learn that, sir?

3 A. How did I learn it? Reading the
4 newspaper.

5 Q. Did any of your constituency
6 ever say that there was a problem with the
7 opioid crisis?

8 A. I get records also from the
9 rescue, that rescue. They have some overdoses
10 in the Village, and I'm told that.

11 Q. By whom are you told?

12 A. The chief.

13 Q. The chief of what?

14 A. Babylon Village Fire Department.

15 Q. Who is that?

16 A. Mike Olive.

17 Q. Has it always been the same
18 chief?

19 A. No.

20 Q. Every four years they change.

21 A. Who was the chief before him?

22 A. Let's see. It was Paul Twardy,
23 T-W-A-R-D-Y.

24 Q. Under Paul Twardy, do you believe
25 you had an opioid crisis?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

135

1 R. SCORDINO

2 A. Yes.

3 Q. Yet you did not apply for a carry
4 license?

5 A. No.

6 MR. TOSCA: Objection.

7 You can answer.

8 A. No.

9 Q. Why?

10 MR. TOSCA: Objection.

11 You can answer.

12 A. Felt safer, I guess.

13 Q. Has there been an increase in the
14 opioid problem since Paul Twardy?

15 A. Yes.

16 Q. Has there been an increase in the
17 amount of cash received from, among other
18 things, permits at the Village of Babylon?

19 A. Yes.

20 Q. Aside from your driver's license
21 and aside from your carry license, do you hold
22 any other certificate, CDL, anything like
23 that, sir?

24 A. No.

25 Q. When I say CDL, I'm referring to

John Lepper v. Village of Babylon
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136

1 R. SCORDINO

2 a commercial driver's license.

3 A. I know what it means.

4 Q. Do you have a boating license?

5 A. Oh, yeah, I do, yes.

6 Q. That's why I'm asking.

7 A. And hunting license.

8 Q. Okay.

9 Boating license, hunting license,
10 carry license.

11 Do you have any other licenses?

12 A. I do not.

13 Q. To be clear, aside from the
14 boating license, the driver's license, the
15 carry license, and the hunting license, do you
16 have any other licenses or certificates here
17 or otherwise?

18 A. No. They're basically the ones I
19 know about.

20 Q. For security purposes was one of
21 reasons you got the carry license?

22 A. Um-hum.

23 Q. Sir, have you ever been
24 threatened coming in or out of the Village of
25 Babylon Town Hall?

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 A. Threatened, yes.

3 Q. By whom were you threatened?

4 A. The gentleman right across the
5 table from us.

6 Q. When you say the gentleman across
7 the table, are you referring to John Lepper?

8 A. Yes.

9 Q. How did he threaten you?

10 A. He at threatened me at one of the
11 Village Board meetings.

12 Q. What did he say?

13 A. He was very threatening. He was
14 using language that I felt was threatening.

15 Q. What was that language, sir?

16 A. I can't recall. It's all on
17 tape, I guess, so you can see it for yourself.

18 Q. When you say, it's all on tape,
19 what do you mean?

20 A. The court where the Village Hall
21 meeting is all filmed.

22 Q. You telling me you have that on
23 tape, Mr. Lepper threatening you?

24 A. I believe so. Or if it's erased,
25 I don't know if it's erased every 30 days.

John Lepper v. Village of Babylon
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138

1 R. SCORDINO

2 I'm not sure.

3 Q. Did you ever call the police in
4 regards to those threats?

5 A. Almost.

6 Q. When you say almost, can you
7 explain why it was almost?

8 A. It reached a point where I
9 thought he was out of control.

10 Q. And this was all recorded?

11 A. Was, yes.

12 Q. Who maintains the recording?

13 A. Treasurer -- the court system.

14 Q. When you say court system, what
15 court system are you referring to?

16 A. Village Hall.

17 Q. Where did this occur? Village
18 Hall; is that right?

19 A. Yes.

20 Q. It occurred in the court?

21 A. Yes. Where we have the Village
22 Hall meetings.

23 Q. Understood.

24 So the Village of Babylon Justice
25 Court has the ability to record; is that

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 right?

3 A. Yes.

4 Q. In those recording, you say John
5 Lepper had threatened you?

6 A. Yes.

7 Q. Did you give that recordings or
8 did you report that to anybody?

9 A. No.

10 Q. What, if anything, did you do?

11 A. Nothing.

12 Q. Were you carrying a weapon on
13 that day?

14 A. No.

15 Q. Was this before or after you had
16 your carry license?

17 A. Sometimes I don't carry it.

18 Q. Was this before or after you had
19 your carry license?

20 A. It was before. I'm sorry.

21 Q. You didn't carry your weapon that
22 day?

23 A. No.

24 Q. Any written minutes of this
25 threatening action that supposedly occurred by

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 Mr. Lepper?

3 A. Village clerk probably has the
4 records.

5 Q. To whom are you referring?

6 A. Ms. Parker, Jean Parker, Jean
7 Parker.

8 Q. Jean Marie Parker?

9 A. Yes.

10 Q. As you sit here today, did you do
11 anything with either the minutes or the video
12 in regards to --

13 A. No.

14 Q. And you perceived these as
15 threats, correct?

16 A. Yes.

17 Q. You can't recall how you were
18 threatened; is that right?

19 A. Verbally, body actions, body
20 movements.

21 Q. What is the threat, what is the
22 verbal threat?

23 A. The verbal threat was, he was
24 verbally attacking me about the letter. The
25 letter that I was trying the explain to him,

John Lepper v. Village of Babylon
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141

1 R. SCORDINO

2 the letter was never sent out, it was a draft
3 letter.

4 Q. When you say draft letter, to
5 what letter are you referring?

6 A. The letter that he suspects and
7 you do too that I wrote and sent out. I was
8 trying to explain to Mr. Lepper that that
9 letter never went out; it was a draft letter.

10 Q. Did you say that in response to
11 what you perceived as a threats?

12 A. Yes. He stormed out of the room.
13 I'll get you. I said, okay.

14 If somebody said that to you,
15 wouldn't you think that was a threat?

16 Q. Sir, I'm here giving deposition.
17 My questions are to you.

18 So I ask you sir, that language
19 is what you perceived a threat, correct?

20 A. Yes.

21 Q. Any other language you perceived
22 as a threat by John Lepper?

23 A. No.

24 Q. You never called the police,
25 correct?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. No.

3 Q. Did you ever call security?

4 A. Yes.

5 Q. Who did you call?

6 A. Bill Whittier, Superintendent of
7 Code Enforcement.

8 Q. How did you do that?

9 A. How did I do that? By phone.

10 Q. Did you use your cellular phone,
11 landline, something else?

12 A. I think I used the Village phone.

13 Q. What did you say to Mr. Whittier?

14 A. I think it would be a good idea
15 to come down here because Mr. Lepper seems to
16 be out of control.

17 Q. Did he come down?

18 A. I believe then Mr. Lepper left.

19 Q. When did this occur?

20 A. One of our Village Board meetings
21 about six months ago.

22 Q. In 2019?

23 A. Um-hum.

24 Q. Aside from Mr. Wittier, did you
25 do anything else in regard to this threat?

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 A. No. Told our Village attorney,
3 Gerard Glass.

4 Q. How did you do that?

5 A. Called him up and told him.

6 Q. Anything else?

7 A. No, that's it.

8 Q. You said threatening body
9 language?

10 A. Um-hum.

11 Q. Where was Mr. Lepper when he said
12 these things?

13 A. Right in the front row.

14 Q. When you say threats body
15 language, what did you perceive to be
16 threatening body language?

17 A. Standing up and approaching the
18 dais, waving his hands.

19 Q. So he stood up and approached the
20 dais waving his hands?

21 A. Um-hum.

22 Q. Anything else?

23 A. Using language that I thought was
24 very threatening.

25 Q. What was that language, sir?

John Lepper v. Village of Babylon
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144

1 R. SCORDINO

2 A. I can't remember.

3 Q. Is there anything preventing you
4 from recalling?

5 A. No.

6 MR. TOSCA: Objection.

7 Q. Anything that would refresh your
8 recollection?

9 A. No.

10 Q. Is there any documents to which
11 you can refer that would help you remember?

12 A. No.

13 Q. As you sit here today, there is
14 nothing that would allow you to recall the
15 words that Mr. Lepper said?

16 A. I don't remember.

17 Q. Were you under the influence of
18 any alcohol that day?

19 A. Me?

20 Q. Yes.

21 A. No.

22 Q. Were you under the influence of
23 any drugs that day?

24 A. No.

25 Q. You considered this a pretty

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 significant event, correct?

3 A. I do, yes.

4 RQ MR. MORRIS: Call for production
5 of that video and those minutes.

6 Q. Sir, since your graduation from
7 high school, have you ever written or prepared
8 any materials for publication or broadcast?

9 A. No.

10 Q. Did you ever send out a
11 newsletter?

12 A. Yes.

13 Q. I ask that question one more
14 time.

15 Since you graduated from high
16 school, have you ever written or prepared
17 anything for publication of for broadcast?

18 MR. TOSCA: Objection.

19 You can answer.

20 A. Me write it, write all of it?
21 No, I don't. I thought I answered the right
22 way the first time.

23 Q. When you say a newsletter was
24 produced, can you explain what you mean?

25 A. Newsletter is put together by the

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 PR Trustees and Board and it goes out with
3 information for our trustees to see. I don't
4 write it. I look over it. I don't write it.
5 We have somebody doing that. We have somebody
6 that's in charge of the newsletter.

7 Q. Do you sign your name to it?

8 A. Sure.

9 Q. Do you sign your name to someone
10 else's writing?

11 MR. TOSCA: Objection.

12 A. Me?

13 Q. Yes.

14 A. Do I sign my name to other
15 people's -- no.

16 Q. So you sign the newsletter,
17 correct?

18 A. I don't sign the newsletter.
19 It's from the mayor and the Village of
20 Babylon. I have a story about the upcoming
21 events.

22 Q. Which mayor is it from?

23 A. It's from the mayor and the
24 Village Board of Trustees.

25 Q. From the mayor of what?

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147

1 R. SCORDINO

2 A. The Village of Babylon.

3 Q. Is it signed by the mayor of the
4 Village of Babylon?

5 A. I don't know what you mean by
6 signed. What are you talking about signed?
7 My signature is not on there.

8 Q. That --

9 A. Meaning signed, signature, right?
10 Are you talking about a signature?

11 Q. Is it attributed to you as the
12 mayor of the Village of Babylon?

13 A. It's attributed to the Board of
14 Trustees and the many things that we have in
15 Babylon Village, that the tribute.

16 Q. It's attributable to you as mayor
17 of Village of Babylon?

18 A. I guess you would call that, you
19 know.

20 Q. I didn't want you to guess, is it
21 or isn't it?

22 A. It's your interpretation,
23 Mr. Morris. It's not my interpretation.

24 Q. Sir, it's a newsletter that goes
25 out that purports to be from the mayor of the

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Village of Babylon and others?

3 MR. TOSCA: Objection.

4 A. I said before, the mayor and the
5 Board of Trustees.

6 Q. When you say mayor and Board of
7 Trustees --

8 A. Right.

9 Q. You are that mayor, right?

10 A. Right, and so is the Board of
11 Trustees.

12 Q. It goes out on your behalf along
13 with the Board of Trustees?

14 A. Right.

15 Q. So in that regard, the newsletter
16 is attributed to you and others as mayor of
17 the Village of Babylon?

18 A. Yes.

19 Q. Aside from that newsletter, have
20 you prepared any material for publication or
21 broadcast?

22 A. There's some information on
23 Facebook that goes out.

24 Q. When you say some information on
25 Facebook that goes out, to what are you

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 referring?

3 A. Information goes to the person
4 who is in charge of Facebook and it goes on
5 the Facebook page.

6 Q. This information isn't produced
7 through osmosis, correct?

8 MR. TOSCA: Objection.

9 Q. You produce it, right?

10 MR. TOSCA: Objection.

11 A. Listen to me, Mr. Morris, listen
12 very carefully, okay. The information is
13 given to the person in charge of the Facebook
14 and she writes and puts it on Facebook. Okay.

15 Q. Do you produce that information?

16 A. I give her the --

17 MR. TOSCA: Objection.

18 You can answer.

19 A. The materials are given to her,
20 okay, and then she writes it. Okay.

21 Q. Those materials, they're produced
22 by you, correct?

23 A. The information, yes.

24 Q. Yes.

25 A. It's okayed by me what goes on

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 Facebook.

3 Q. You oversee that process,
4 correct?

5 A. Right.

6 Q. Because you're the mayor of the
7 Village of Babylon?

8 A. That's very good.

9 Q. It's not done by Jean Marie
10 Parker, right?

11 A. No.

12 Q. Because she's the clerk?

13 A. Right.

14 Q. And you're the mayor?

15 A. Right.

16 Q. Aside from the Facebook web page
17 and aside from the newsletter publication,
18 since your graduation from high school, have
19 you ever written or prepared any material for
20 publication or broadcast?

21 MR. TOSCA: Objection.

22 A. I don't recall.

23 Q. You say you don't recall --

24 A. I don't know.

25 Q. You don't know?

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1 R. SCORDINO

2 A. I don't know.

3 Q. Is it that you don't know or is
4 it that you don't recall?

5 A. I don't know.

6 Q. But you know about the Facebook,
7 right?

8 A. Right.

9 Q. You know about the newsletter?

10 A. Right.

11 Q. What else do you know about?

12 MR. TOSCA: Objection.

13 You can answer over objection.

14 A. I don't know what you're talking
15 about, other than things that, those are the
16 two things.

17 Q. Did you ever prepare something
18 for broadcast on Twitter or Instagram?

19 A. Twitter, no.

20 Q. What about Myspace?

21 A. No.

22 Q. Did you ever prepare something
23 for production on American Online [sic]?

24 A. No.

25 Q. Did you ever prepare something on

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 a school board website or publication?

3 A. No.

4 Q. Did you ever put out the greeting
5 card that said, from the Village of Babylon
6 mayor, Mayor Scordino?

7 A. Yes.

8 MR. TOSCA: Objection.

9 A. Yes, we do.

10 That's not from the Village.

11 Q. That from you?

12 A. As what?

13 Q. Publication.

14 A. Right, it's a Better Babylon
15 Christmas card that goes out. It's not a
16 Village card, it's Better Babylon Party.

17 Q. I guess, let's make a note of
18 that. We'll go back.

19 Better Babylon Village party?

20 A. No.

21 Listen again, Better Babylon
22 Party.

23 Q. Is that Better Babylon, like the
24 Town of Babylon or the Village or something
25 else?

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1 R. SCORDINO

2 A. Better Babylon Party.

3 Q. Is that like a political party

4 or --

5 A. That's the party, the independent
6 party that we have when we run for election.

7 Q. In this independent party that
8 you run for election, are you referring to
9 yourself encompassed in that party?

10 A. Yes.

11 Q. Encompassed in that party, things
12 are prepared for publication?

13 A. Yes.

14 Q. And you prepared some of them?

15 A. No.

16 Q. You prepared none of them?

17 A. I oversee them.

18 Q. Do you ever sign them?

19 A. Yes.

20 Q. Did you ever approve them?

21 A. Yes.

22 Q. Is it fair to say some of these
23 things wouldn't go out unless you either
24 signed or approved them?

25 A. Hard to tell.

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1 R. SCORDINO

2 Q. What makes it hard to tell?

3 A. Because I don't know what you
4 mean. I don't know what you're driving at.

5 Q. Start with the Better Babylon
6 Party?

7 A. Right.

8 Q. When did you first participate in
9 the Better Babylon Party?

10 A. 1986.

11 Q. Since 1986, have you ever
12 prepared any material for publication or
13 broadcast within the Better Babylon Party?

14 MR. TOSCA: Objection.

15 A. Public, no, nothing. I didn't.
16 I've never prepared anything.

17 Q. Did you ever make a holiday card?

18 A. Holiday cards, we put out, yes.
19 We do that.

20 Q. Anything other than the holiday
21 card?

22 A. That's it.

23 Q. Have you ever given them any
24 information put out in any material of any
25 sort?

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155

1 R. SCORDINO

2 MR. TOSCA: Objection.

3 A. There's information that goes out
4 all the time, you know what I mean, it goes to
5 one of our publications and they take care of
6 it, put it together. Did you ever run a
7 campaign?

8 Q. No, I haven't.

9 A. There is a certain thing that you
10 have to understand, people, there are people
11 that are hired that do this stuff, and we get
12 the draft and we look at it and we okay it.
13 Okay.

14 Q. And in this that process, I'm
15 going to ask you to consider that preparation
16 for material prior to publication or
17 broadcast.

18 A. Okay.

19 MR. TOSCA: Objection.

20 Q. Aside from the holiday card, what
21 have you prepared for publication or broadcast
22 for the Better Babylon Party?

23 MR. TOSCA: Objection.

24 You can answer.

25 A. A number of things.

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1 R. SCORDINO

2 Q. What are they?

3 A. Well, advertisements, political
4 campaign literature.

5 Q. What --

6 A. Our brochure you mentioned
7 before, you know.

8 Q. So start with advertisements,
9 what advertisements have you prepared for
10 either or broadcast within the Better Babylon
11 Party?

12 A. Advertisements, I'm talking about
13 campaign literature.

14 Q. It's subsuming campaign
15 literature?

16 A. Pardon me?

17 Q. It's subsumed, contained with?

18 A. Yes.

19 Q. For what persons did you prepare
20 such information as part of their political
21 campaign?

22 A. For everyone that is a member of
23 the Better Babylon Party that's running for
24 election.

25 Q. Since 1986 to the present, who

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1 R. SCORDINO

2 was that?

3 A. Wasn't me in 1986. From 2002,
4 say but not 1986.

5 Q. Again, sir, since 1986, what have
6 you written or prepared for publication
7 broadcast in the Better Babylon Party for what
8 persons?

9 A. I wasn't involved in anything
10 from 1986 to 2002, okay. From 2002 to the
11 present time, okay, I was the overseer, I
12 guess, to the campaign literature that went
13 out for the people that were in the Better
14 Babylon Party.

15 MR. MORRIS: Time now is 12:40.

16 (Mr. Morris changed battery in
17 video camera.)

18 MR. MORRIS: Time is 12:42.

19 Q. Sir, you participate in
20 campaigns, correct?

21 A. Yes.

22 Q. Those campaigns are for people?

23 A. Yes.

24 Q. Who are those people?

25 A. Mary Adams, Kevin Muldowney, Tony

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1 R. SCORDINO

2 Davida, myself, Jack Rafter, Debbie Basile,
3 B-A-S-I-L-E, Alice Vanderbilt, Diane Gilmore,
4 a number of other people I can't remember now
5 their names going back.

6 Q. Did you prepare or approve any of
7 the material as part of those campaigns?

8 A. Yes.

9 Q. Did you prepare or approve
10 material for Mary Adams?

11 A. Yes.

12 Q. Did you prepare or approve
13 material for Mr. Muldowney?

14 A. Yes.

15 Q. Did you prepare or approve
16 material for Mr. Davida?

17 A. Yes.

18 Q. Did you prepare or approve
19 material for Mr. Jack Rafter?

20 A. Yes.

21 Q. Did you prepare or approve
22 material for Debbie Basile?

23 A. Yes.

24 Q. Did you prepare or approve
25 material for Alice Vanderbilt?

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1 R. SCORDINO

2 A. Yes.

3 Q. What about Diane Gilmore?

4 A. Diane Gilmore. You have to
5 understand, this is done. Not only by myself
6 but with a campaign committee.

7 Q. So others oversaw this process as
8 well.

9 A. All the trustees that you just
10 mentioned there, plus other people are also
11 involved.

12 Q. And you contributed to that; is
13 that correct?

14 A. Yes.

15 Q. Sir, do you maintain a website?

16 A. Maintain a website, no.

17 Q. Do you have a website?

18 A. No.

19 Q. Is there anything on the internet
20 that is your domain?

21 A. No.

22 Q. Do you maintain any social media
23 account?

24 A. No.

25 Q. Have you maintained any social

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 media account?

3 A. No.

4 Q. By whom are you employed at the
5 present time?

6 A. Village of Babylon, Ocean Beach
7 Youth Group.

8 Q. Anyone else?

9 A. No.

10 Q. For how long have you been an
11 employee of the Village of Babylon?

12 A. Since 1987.

13 Q. How long have you been employed
14 by the Ocean Beach Youth Group?

15 A. Since 1999.

16 Q. Were you employed at any time
17 during any of periods you attended school
18 after your high school graduation?

19 A. After my high school graduation.
20 Town of Babylon I believe, 1970, that was my
21 year, and also with the Babylon Yacht Club as
22 a swimming instructor and lifeguard.

23 Q. You said you worked at the Town
24 of Babylon from 1971 to what time?

25 A. It was '70 to, I believe, it was

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1 R. SCORDINO

2 1986.

3 Q. What position did you hold?

4 A. Recreation specialist.

5 Q. Did you hold any other position
6 before with Town of Babylon?

7 A. No.

8 Q. Is that a Civil Service position
9 or something else?

10 A. No.

11 Q. Did you apply for such position?

12 A. Yes.

13 Q. With whom did you apply?

14 A. Town of Babylon.

15 Q. Is there a person.

16 A. No.

17 Q. Who was your supervisor?

18 A. Jack O'Donnell.

19 Q. Was it always Jack O'Donnell or
20 did it change at some point?

21 A. No, it was always him.

22 Q. You said you were working at the
23 Babylon Youth Club; is that right?

24 A. Ocean Beach Youth Group.

25 Q. Excuse me, Babylon Yacht Club?

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1 R. SCORDINO

2 A. Yes.

3 Q. You were a lifeguard?

4 A. Lifeguard and swimming
5 instructor.

6 Q. Do you have a license to be a
7 lifeguard?

8 A. Yes.

9 Q. Sir, we discussed earlier --

10 A. I know, that's one I forgot. I'm
11 sorry. Lifeguard back how many years? Come
12 on.

13 Q. Sir, just as we're talking about
14 it now, obviously the gun permit might be a
15 little more recent --

16 A. Right.

17 Q. -- but do you have any other
18 licenses or certifications which --

19 A. I can't recall but you just made
20 me recall the lifeguard license.
21 Certification, I don't even think it's a
22 license, a certification.

23 Q. Just like the lifeguard is a
24 certification, any other certifications which
25 you now recall?

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1 R. SCORDINO

2 A. No.

3 Q. How long did you act as a
4 lifeguard at the Yacht Club?

5 A. '71, '72, '72 to '86, I believe.

6 Q. What happened in '86?

7 MR. TOSCA: Objection to the
8 form.

9 You can answer.

10 A. Started to get too busy, couldn't
11 do it anymore.

12 Q. Was that a full-time position,
13 part-time position?

14 A. Part-time, summer position.

15 Q. The Town of Babylon position, was
16 that a full-time or part-time?

17 A. Part-time.

18 Q. Did you hold any other employment
19 during these times?

20 A. No.

21 Q. Did you have any volunteer
22 positions during this time?

23 A. No.

24 Q. In 1987, you were employed by the
25 Village of Babylon?

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1 R. SCORDINO

2 A. Yes.

3 Q. In what capacity?

4 A. Trustee.

5 Q. Was that as part of the Better
6 Babylon Party?

7 A. Yes.

8 Q. Who else did you run with that
9 year?

10 A. Yes.

11 Q. Who else did you run with that
12 year?

13 A. Don Conroy.

14 Q. Anybody else?

15 A. That's it.

16 Q. How long did you maintain the
17 trustee position?

18 A. Until about 2002, I believe.
19 Eight years before that I was deputy mayor.

20 Q. When you say eight years before
21 that --

22 A. 2002, so it would be like '96.

23 Q. You were part of the better
24 Babylon Village party when you were elected in
25 1987, as trustee, correct?

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1 R. SCORDINO

2 A. Right.

3 Q. At some point, did you have to
4 run again for that position?

5 A. Yes.

6 Q. What year was that.

7 A. '87 and four is '91, '91 would be
8 '95, '95 would be 2009, sorry '95 would be
9 1998 and 1998 to 2002, I was deputy mayor. In
10 2002, I was appointed as deputy mayor.

11 Q. Going back --

12 A. Sorry, 2002, I was appointed as
13 mayor because Don Conroy passed away.

14 Q. Going back to the 1991 election,
15 were you part of the Better Babylon Party?

16 A. Yes.

17 Q. With whom did you run with, if
18 anyone?

19 A. I ran with Don Conroy and Ray
20 Accelletta.

21 A-C-C-E-L-L-E-T-T-A, that's close
22 enough.

23 Q. Anyone else?

24 A. That it?

25 Q. What were Mr. Conroy and

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1 R. SCORDINO

2 Mr. Accelletta running for?

3 A. Trustee.

4 Q. Who was mayor at the time?

5 A. Don Conroy.

6 Q. Was he running for trustee or
7 mayor?

8 A. Mayor.

9 Q. Who was the Village of Babylon
10 justice at that time?

11 A. I believe it was Vince Tennety,
12 T-E-N-N-E-T-Y.

13 Q. Eventually there came a time in
14 1995 you ran again?

15 A. Yes.

16 Q. Were you part of the Better
17 Babylon Party?

18 A. Yes.

19 Q. With whom did you run?

20 A. I believe at that time it was
21 myself, Don Conroy, again, myself and I
22 believe it was Alice Vanderbilt, I guess. I'm
23 not a hundred percent sure.

24 Q. What position was --

25 A. Trustee.

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1 R. SCORDINO

2 Q. Don Conroy, what was he running
3 for?

4 MR. TOSCA: Let him finish the
5 question.

6 Q. Don Conroy, for what position was
7 he running for 1995 to 1998?

8 A. Mayor.

9 Q. Did there come a time in 1998 you
10 again ran for public election?

11 A. Yes.

12 Q. What position?

13 A. Trustee.

14 Q. Were you part of the Better
15 Babylon Party at the time?

16 A. Yes.

17 Q. With whom did you run?

18 A. Mayor Conroy, myself, I guess,
19 Alice Vanderbilt again.

20 Q. Anyone else?

21 A. That's it.

22 Q. In 2002, you were appointed as
23 the mayor; is that right?

24 A. Correct.

25 Q. Did you run for any

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1 R. SCORDINO

2 publicly-elected position in 2001 or 2002?

3 A. No.

4 Q. When was the next time after you
5 were appointed as the mayor of Village of
6 Babylon did you run for a publicly-elected
7 position?

8 A. It was October of 2002. We
9 ran -- let's see it was next -- it was 2003
10 was the next time I ran for mayor.

11 Q. What party did you run?

12 A. Better Babylon Party.

13 Q. With whom did you run.

14 A. Myself, Alice Vanderbilt, and
15 Tony Davida.

16 Q. Anyone else?

17 A. That's it.

18 Q. Were you successful in the 2003
19 election?

20 A. Yes.

21 Q. What position did you obtain?

22 A. Mayor.

23 Q. And you held that position
24 consistently throughout the years?

25 A. Yes.

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 Q. When was the next time after the
3 2003 election you had the run the position of
4 mayor?

5 A. It was another four years, so it
6 would be 2007.

7 Q. Which party did you run?

8 A. Better Babylon Party.

9 Q. With whom did you run?

10 A. Tony Davida myself, the mayor
11 Tony Davida as trustee, and I believe it was
12 Debbie Basile.

13 B-A-S-I-L-E.

14 Q. And you were running for mayor
15 that year?

16 A. Yes.

17 Q. You were successful that year?

18 A. Yes.

19 Q. Anyone else running that year?

20 A. You have Tony Davida, right?

21 Q. Yes.

22 A. It's usually the mayor and two
23 trustees.

24 Q. At some point after the 2003
25 election, have you ever ran for mayor of

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1 R. SCORDINO

2 Village of Babylon?

3 A. Yes.

4 Q. What year was that?

5 A. 2007.

6 Q. With whom did you run?

7 A. Mayor, myself as mayor, Tony

8 Davida as trustee and Debbie Basile as

9 trustee.

10 Q. Was that with the Better Babylon

11 Party?

12 A. Yes.

13 Q. Were you successful in that

14 election?

15 A. Yes.

16 Q. After that 2007 election, did

17 there come a time you again ran?

18 A. Yes. From --

19 Q. What year was that?

20 A. Another four years, so 2011.

21 Q. For what position did you run?

22 A. Mayor.

23 Q. With which party?

24 A. Better Babylon Party.

25 Q. With whom did you run?

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1 R. SCORDINO

2 A. Same people, Tony Davida and
3 Debbie Basile.

4 Q. Were you successful?

5 A. Yes.

6 Q. Did there come a time you again
7 ran for public office?

8 A. Yes.

9 It would be -- what's the last
10 date you have there?

11 Q. 2011?

12 A. 2011, be '15.

13 Q. What position did you run?

14 A. Mayor.

15 Q. What party?

16 A. Better Babylon Party.

17 Q. With whom did you run?

18 A. Tony Davida and Debbie Basile.

19 Q. Were you successful?

20 A. Yes.

21 Q. Was Tony Davida successful?

22 A. Yes.

23 Q. Was Debbie Basile successful?

24 A. Yes.

25 Q. How long did Debbie Basile

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1 R. SCORDINO

2 maintain her position as trustee?

3 A. I believe in the next year --
4 what year are you up to?

5 Q. 2015.

6 A. 2015, so I think, let's see,
7 would be in two thousand -- I think she
8 dropped out. I believe she dropped out and we
9 put in a new person, Robyn Silvestri, that's
10 who it was.

11 Q. Robyn Silvestri is now part of
12 the --

13 A. Right, Better Babylon Party.

14 Q. And she's also part of the
15 Village of Babylon Board, Town Board?

16 A. Yes, she's trustee.

17 Q. You said, "we determined."
18 Who is we?

19 A. The, again, the campaign
20 committee, we interviewed people.

21 Q. Who is part of the campaign?

22 A. All the trustees, myself, Jack
23 Conroy, Bruce Huminik, Bruce Zappia,
24 Z-A-P-P-I-A, A. That's it.

25 Q. Anyone else aside from, when you

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1 R. SCORDINO
2 say trustees of Village of Babylon trustees?
3 A. Yes.
4 Q. Anyone else?
5 A. That's it.
6 Q. Does the judge participate?
7 A. No.
8 Q. Is the judge part of the Village
9 of Babylon --
10 Withdrawn.
11 Is Judge Rafter part of the
12 Better Babylon Party?
13 A. He runs but there are certain
14 constraints he has to follow as a judge. I
15 don't know what they are.
16 Q. When you say he runs --
17 A. Runs as part of the party, he
18 runs on that party.
19 Q. Does the campaign committee
20 support him?
21 A. Yes.
22 Q. You're part of that campaign?
23 A. Yes.
24 Q. Has the campaign committee
25 supported any other judge for Village of

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1 R. SCORDINO

2 Babylon justice?

3 A. Going back, Vince Tennety was a
4 judge, Jack, those are the only two I believe.

5 Q. Under what circumstances did you
6 come to learn who Jack Rafter was?

7 A. I believe he came to the campaign
8 committee. I don't know.

9 Q. What year?

10 A. I'm not sure.

11 Q. When he came to the campaign
12 committee, did you support him?

13 A. Yes.

14 Q. Did you have conversations with
15 him after he came to the campaign committee?

16 A. No, we don't get into any of
17 that. As I said, there's certain restrictions
18 he has.

19 Q. Was there anyone else aside from
20 Robyn Silvestri that was discussed by the
21 campaign committee replacing Ms. Debbie
22 Basile?

23 A. At that time, I think when she
24 first ran, there was nobody else that came
25 forward.

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1 R. SCORDINO

2 Q. Was there anyone aside from Jack
3 Rafter discussed by the campaign committee in
4 regards to replacement of Vince Tenny?

5 A. No.

6 Q. Were you ever introduced to Jack
7 Rafter by any person?

8 A. No. I knew Jack. I knew Jack as
9 a resident, that's about it.

10 Q. What were the circumstances under
11 which you first met Jack Rafter?

12 A. I can't remember.

13 Q. You knew him as a resident of
14 what?

15 A. Resident of the village of
16 Babylon.

17 Q. How did you come to learn he was
18 a resident of the village of Babylon?

19 A. I used to see him in the village
20 of Babylon.

21 Q. Where did you used to see him?

22 A. The village of Babylon.

23 Q. Sir, where within the village of
24 Babylon did you see him?

25 A. Around his house, in village of

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1 R. SCORDINO

2 Babylon business district.

3 Q. There is a business district in
4 the village of Babylon?

5 A. Yes.

6 Q. When you say, his house, what
7 area did you see him?

8 A. He lives off Little East Neck
9 Road.

10 Q. Have you had occasion to be at
11 his house?

12 A. I don't know if I've ever been to
13 his house. No.

14 Q. Sir, have you communicated with
15 Jack Rafter on a personal level?

16 MR. TOSCA: Objection.

17 You can answer.

18 A. No. Not a personal level. A
19 personal level, yes, playing golf, maybe.

20 Q. You have attended functions where
21 he's been, correct?

22 A. Yes.

23 Q. You have seen him outside of the
24 village of Babylon, right?

25 A. Yes.

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1 R. SCORDINO

2 Q. You have known him before you
3 were the mayor of Village of Babylon?

4 A. I don't think so. I mean when I
5 became mayor, I became more involved. As a
6 trustee, you really don't get involved in a
7 lot of different things, other than the fact
8 that the area that you have which was the
9 pool, which I was really deep into.

10 Q. You were deep into the pool?

11 A. Because it was reconstructed back
12 in 1986, the reconstruction of the pool, so I
13 was very busy doing that and overseeing the
14 pool, which the like a six-month job; so you
15 really don't have time for anything else
16 during the summer months.

17 Q. You come to use Jack Rafter as an
18 attorney outside of his role as the Village
19 Justice?

20 A. No.

21 Q. Have you had the opportunity to
22 consult with Jack Rafter as an attorney --

23 A. No.

24 Q. -- outside the Village Justice?

25 A. No.

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1 R. SCORDINO

2 Q. You said the Village of Babylon
3 has a business district?

4 A. Yes.

5 Q. What is the business district of
6 the Village of Babylon?

7 A. What is it?

8 Q. Yes.

9 A. Runs from Deer Park Avenue to
10 Montauk Highway. From Montauk Highway to 231
11 and Argyle Lake on the westerly side.

12 Q. Is there a financial district or
13 any other district aside from the business
14 district?

15 A. No. Just business district.

16 Q. Is there an ocean district,
17 marina district?

18 A. You have the -- I guess you would
19 call it the pool, the recreation area, the
20 bathing beach area.

21 Q. Anything else?

22 A. That's it.

23 MR. MORRIS: It's now 1:04.

24 We're off the record.

25 (Whereupon, a lunch break was

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1 R. SCORDINO

2 taken from 1:04 p.m. through 1:54 p.m.)

3 MR. MORRIS: Time is now 1:54.

4 Q. Mr. Scordino, did you discuss
5 your testimony with anyone during the break?

6 MR. TOSCA: Objection.

7 A. Yes.

8 Q. With whom did you speak?

9 A. My attorneys.

10 Q. Without telling me the substance
11 of the conversation, what was the length of
12 the conversation?

13 MR. TOSCA: Objection.

14 Don't answer the question.

15 MR. MORRIS: You're telling him
16 not to answer how long the discussion
17 occurred?

18 MR. TOSCA: Yes.

19 Attorney/client.

20 Q. Did you discuss the nature of
21 your testimony; is that right?

22 MR. TOSCA: Objection.

23 Don't answer the question.

24 Attorney/client.

25 Q. Any testimony you would like to

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1 R. SCORDINO

2 change now that you had that discussion?

3 MR. TOSCA: Objection.

4 Don't answer that question.

5 Well, you can answer the

6 question.

7 A. I'm surprised at you, a man of
8 your quality missed one of the most important
9 certifications that I had. You don't know?
10 Are you married?

11 Q. I'm not.

12 A. You're not. I'm married.
13 Certificate, marriage certificate, make sure
14 it's in the minutes.

15 Q. There you go.

16 Speaking of that, have you ever
17 served as a registrar of the Village of
18 Babylon?

19 A. No.

20 Q. Ocean Beach Youth Group, is that
21 the summer camp you mentioned earlier?

22 A. Yes.

23 Q. What is the Ocean Beach Youth
24 Group?

25 A. What is it? It's a day camp.

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1 R. SCORDINO

2 Q. Aside from director of that day
3 camp, have you had any association with the
4 Ocean Beach Youth Group?

5 MR. TOSCA: Objection.

6 You can answer.

7 A. Say it again, your last couple
8 words I didn't get.

9 (Whereupon, the requested portion
10 was read back by the reporter.)

11 A. I don't know what the question
12 means. Can you make it a little clearer?

13 Q. You serve as director of the
14 Ocean Beach Youth Group?

15 A. Yes.

16 Q. When did you first start that
17 position?

18 A. 1999.

19 Q. It's a position you have had
20 every summer up until this year?

21 A. Right. Including this year.

22 Q. Aside from director, have you
23 ever served in any other capacity?

24 A. No.

25 Q. Have you ever served to fundraise

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1 R. SCORDINO

2 for the Ocean Beach Youth Group?

3 A. Yes.

4 Q. Anything like that, like
5 fundraising that you have done for the Ocean
6 Beach Youth Group, aside from what you've
7 testified to?

8 A. Their Board of directors holds a
9 fundraiser that I partake in.

10 Q. Do you disseminate any
11 publications with regard to that fundraiser?

12 A. No.

13 Q. What are your job duties as
14 director of Ocean Beach Youth Group?

15 A. I oversee a hundred employees and
16 oversee about a hundred fifty campers a week
17 for eight weeks.

18 Q. You said a hundred employees and
19 a hundred fifty campers?

20 A. Um-hum. A week. They change
21 every week.

22 Q. Is that right, is there one
23 employee for every one-and-a-half campers?

24 A. Close to it.

25 Q. When do you do this?

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1 R. SCORDINO

2 A. Usually opens the end of June to
3 the middle of August, the dates vary. It's an
4 eight-week camp.

5 Q. You do this while holding down
6 the title of mayor of Village of Babylon?

7 A. Right. I don't work on weekends.
8 I go off the island on Tuesdays and off on
9 Fridays.

10 Q. How do you get on and off the
11 island?

12 A. Boat.

13 Q. What boat do you use?

14 A. They gave me a both.

15 Q. What is they?

16 A. Ocean Beach Youth Group.

17 Q. What boat is it?

18 A. What boat is it? Make?

19 Q. Yes.

20 A. Center console, 19-foot center
21 console.

22 Q. Does the boat have a name?

23 A. No.

24 Q. In whose name is the boat
25 registered?

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1 R. SCORDINO

2 A. Ocean Beach.

3 Q. Who pays the insurance?

4 A. Ocean Beach Youth Group.

5 Q. Where is the boat docked

6 regularly?

7 A. Boat is docked at, right off side
8 of the Babylon Village dock on a private boat
9 slip.

10 Q. When you say private boat slip,
11 to whom does the boat slip belong?

12 A. Great Bay Marine.

13 Q. Who pays for the boat slip?

14 A. It's given to the Ocean Beach
15 Youth Group by the company who does the
16 repairs for our boat.

17 Q. What company is that?

18 A. Great Bay Marine.

19 Q. Aside from using the boat to get
20 yourself back and forth to Fire Island, does
21 anyone else use that boat?

22 A. No.

23 Q. Is it fair to say you have
24 exclusive use of that boat?

25 A. Yes.

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1 R. SCORDINO

2 Ocean Beach Youth Group also uses
3 the boat during the day comp.

4 Q. You said it was right next to
5 something owned by the Village of Babylon?

6 A. Village docks, yeah. They have a
7 piece of property that's adjacent to our
8 Village dock.

9 Q. How do you refuel the boat?

10 A. I go to the gas station and fill
11 it.

12 Q. Who pays for that?

13 A. Ocean Beach Youth Group.

14 Q. Which gas station do you utilize?

15 A. We have two accounts, one at the
16 Babylon Bait Station on Sumpwams Creek,
17 S-U-M-P-W-A-M-S Creek; and the other one is at
18 Bay Shore Marina and another one is at, I
19 think, it's Saltaire, they have a gas station
20 there, I can fill it at Fire Island.

21 Q. That's paid for by Ocean Beach
22 Youth Group?

23 A. Yes.

24 Q. What kind of village is the
25 Village of Babylon?

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1 R. SCORDINO

2 MR. TOSCA: Objection.

3 A. What kind -- I don't understand
4 the question.

5 Q. Is it an incorporated village?

6 A. Incorporated village. All
7 villages are incorporated.

8 Q. Do you know how villages are
9 classified in the State of New York?

10 A. I think they're all incorporated
11 villages. If you have a "Village" before your
12 name, then it's a Village, it's incorporated.

13 Q. Do you know what class the
14 Village of Babylon is: first class, second
15 class, third class?

16 A. No. I didn't even realize they
17 were classed.

18 Q. Does the Village of Babylon
19 maintain waterfront property?

20 A. Um-hum.

21 Q. Where is that waterfront
22 property?

23 A. Let's see, on a Sumpwams Creek,
24 we have boat slips that run from Shore Road
25 all the way down to the end of Shore Road. We

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1 R. SCORDINO

2 have Lewis Circle, Lewis Pond which is another
3 number of boat slips that are there. We have
4 Buoyance Canal which is right next to Lewis
5 Pond. We have Beach Canal which is down by
6 the Village pool. We have Lighthouse Road
7 that a number of slips on Lighthouse Road, and
8 at the end Mayhew Avenue we have property, we
9 don't have boat slips, and the Village pool,
10 and also our beach pool.

11 Q. Do you know if you missed
12 property?

13 A. Ends of property, ends of roads
14 that border the beach are also owned by the
15 Village. Lighthouse Road is one, Araca Road,
16 Annuskemunnica. Little East Neck, no Fred
17 Shores is a private club, we don't own that.
18 I believe that's it, pretty close to it.

19 Q. Does the Village of Babylon
20 maintain parks?

21 A. Yes.

22 Q. What parks does it maintain?

23 A. We have approximately eight
24 parks: Lighthouse Road Park, Lewis Pond Park,
25 the Locust Avenue, I'm sorry Park Avenue,

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1 R. SCORDINO

2 Cooper Street Park, Fire Island Park. I'm
3 sorry that's Lewis and Fire Island are the
4 same ones. We have two ball fields that are
5 parks on Locust Avenue, one on Locust -- two
6 on Locust and one on Ralph Avenue. We have
7 two dog parks, one on the end of George Street
8 and one at the entrance of Locust Avenue. I
9 think I got them all.

10 Q. Does the Village of Babylon have
11 public schools?

12 A. No.

13 Q. Does the Village of Babylon have
14 a railroad station?

15 A. Yes.

16 Q. Is that the Village of Babylon
17 Long Island Railroad branch?

18 A. Yes.

19 Q. Have you had any business
20 association with the Incorporated Village of
21 Babylon?

22 MR. TOSCA: Objection.

23 You can answer.

24 A. I don't know what you mean by the
25 question.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Q. Have you ever contracted with
3 Village of Babylon?

4 A. No.

5 Q. Have you ever provided services
6 to the Village of Babylon outside of your
7 capacity as elected official?

8 A. No.

9 Q. Were you ever employed outside of
10 your capacity as elected official by the
11 Incorporated Village of Babylon?

12 A. No.

13 Q. Before you mentioned a number of
14 elections.

15 Did you ever run opposed in any
16 of your elections?

17 A. Unopposed, yes.

18 Q. Which election?

19 A. As mayor, I believe the first
20 four I believe were unopposed.

21 Q. Have ever run opposed, has anyone
22 opposed you?

23 A. Last year was the first year.

24 Q. Aside from that last year, you
25 have never had opposition in any of your

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 campaigns?

3 A. No.

4 Q. In any of your campaigns?

5 A. As trustee, I think there were a
6 couple, but usually I run unopposed because I
7 do such a great job.

8 Q. What were the earnings from
9 employment with the Village of Babylon last
10 year?

11 A. 15,000.

12 Q. Any other benefits accrued
13 towards a pension benefit?

14 A. Yes. Not accrued to it. I
15 belong to a pension. The pension.

16 Q. When you say you belong to a
17 pension, is that a Village of Babylon pension?

18 A. New York State.

19 Q. Can you explain exactly what it
20 is in terms of that pension?

21 A. It's a pension plan. You have to
22 accrue so many days on it and you get credit
23 for it.

24 Q. How many days do you need to
25 accrue?

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. Let's see. I think it's a third
3 of a day accumulates to a day. A third of a
4 day, you know, you have to get two-thirds of a
5 day and you get credit for day. I believe
6 that's it.

7 Q. How much pension do you have
8 accrued so far from New York State?

9 A. I think I have like 12 years, but
10 I also got credit for the Town too because
11 it's the same pension plan.

12 Q. In addition to the 15,000, the
13 car, certain payments related to that car and
14 now the pension, is there any other benefit
15 along with that --

16 A. Health insurance.

17 Q. Anything else that we didn't
18 discuss?

19 A. That's it.

20 Q. How much did you make the year
21 before as the mayor of the Village of Babylon?

22 A. Same, 15.

23 Q. Did you ever hold elected office
24 anywhere other than the Village of Babylon?

25 A. No.

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1 R. SCORDINO

2 Q. Aside from whatever party you
3 mentioned earlier, are you part of any other
4 political party?

5 A. Yes.

6 Q. What party?

7 A. Republican party, committeeman.

8 Q. Can you explain what you mean by
9 committeeman?

10 A. Each ED in the Village of Babylon
11 is separated and there are two committeemen
12 for each ED.

13 Q. When you say ED, what does ED
14 stand for?

15 A. Election district.

16 Q. You are the Republican election
17 district --

18 A. Committeeman.

19 Q. Which district?

20 A. Fifteen.

21 Q. ED 15, is that an appointed
22 position, elected position, or something else?

23 A. I guess it's a -- I think, you
24 know, I think we're appointed to that
25 position.

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1 R. SCORDINO

2 Q. By whom where you appointed?

3 A. By the Republican chairman.

4 Q. Who is that?

5 A. Herb Hemmendinger. There's
6 another license. I think I'm certified there
7 with another license from the County, Board of
8 Elections, I guess certifies it. All these
9 things come to mind.

10 Q. Is there anything you might have
11 a certification or license for which we
12 haven't discussed?

13 A. No.

14 Q. Have you --

15 A. Pole watching certificate goes
16 with the committeeman.

17 Q. Aside from the political campaign
18 to which you mentioned earlier, the Better
19 Babylon Party, have you ever been part of any
20 other election campaigns?

21 A. Not really since I've been the
22 mayor.

23 Q. Before you were mayor.

24 A. I think in the first couple of
25 years as trustee and then I didn't really get

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 involved that much.

3 Q. Have you ever been part of any
4 election campaign for anyone outside of the
5 Village of Babylon?

6 A. No.

7 Q. Were you involved in any Suffolk
8 County, New York State, any campaign on behalf
9 of the Republican party in any capacity?

10 A. No.

11 Q. As the mayor of the Incorporated
12 Village of Babylon, are you a marriage officer
13 permitted by the State of New York to perform
14 weddings?

15 A. Yes.

16 Q. Do you have any certification or
17 license for that?

18 A. I don't believe so. I think it
19 goes along with the mayorship.

20 Q. How many weddings have you
21 performed as mayor of the Incorporated Village
22 of Babylon.

23 A. About ten I think over the
24 18 years.

25 Q. Have you been paid for performing

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1 R. SCORDINO

2 any of those weddings?

3 A. In lieu of that, I usually have
4 the people write a check to some of the
5 organizations in the Village, usually the
6 Babylon Beautification Society.

7 Q. Have you ever received any tips
8 or gratuity for performing a wedding?

9 A. No.

10 Q. Did you report any of the income
11 from any of weddings as income on your Federal
12 or State tax?

13 A. No, because they make the
14 donation right to the organization.

15 Q. And you never received any tips
16 or gratuities associated with that?

17 A. No.

18 Q. In that case, you never earned
19 any money for officiating a wedding?

20 A. No, it's a service.

21 Q. Did you ever serve as a coach in
22 any capacity?

23 A. Yes.

24 Q. Were you paid?

25 A. Yes.

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1 R. SCORDINO

2 Q. How much were you paid as a
3 coach?

4 A. Varies.

5 Q. What things did you coach?

6 A. I coached a variety --
7 JV lacrosse over in West Islip when I was
8 teaching. I was also coaching varsity
9 basketball in Babylon, JV, varsity gymnastics
10 for girls, junior high football in Babylon,
11 and junior high gymnastics over in West Islip.

12 Q. Were you paid for any of those
13 positions?

14 A. Yes.

15 Q. Which ones?

16 A. All of them.

17 Q. How much were you paid?

18 A. Varies again. I can't recall
19 what the exact amounts, they ranged from 600,
20 back then from \$600 for some of the junior
21 high positions to 1,200 for the varsity
22 positions.

23 Q. By whom were you paid?

24 A. School districts.

25 Q. Which school districts?

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1 R. SCORDINO

2 A. West Islip and Babylon.

3 Q. In your time coaching, did you
4 ever have an altercation as a coach with your
5 team?

6 A. No.

7 MR. TOSCA: Objection.

8 Q. Was there a physical altercation
9 when you served as lacrosse coach?

10 A. No.

11 Q. Sir, do you recognize the name
12 Posh Salon in Babylon Village?

13 A. Um-hum.

14 Q. Have you ever had an association
15 with the Posh Salon in Babylon Village?

16 A. Posh Salon, that's a business.

17 Q. Have any association with --

18 A. Sure, I know them.

19 Q. What is the nature of such
20 association?

21 A. I know they're a business in the
22 Village.

23 Q. Were you ever employed by the
24 Posh Salon of Babylon Village?

25 A. No.

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1 R. SCORDINO

2 Q. Anyone in your family employed --

3 A. No.

4 Q. -- in any capacity.

5 A. I don't recall. My wife is not.

6 I don't think my daughter or my son was.

7 Q. Aside from it being a business
8 within the Village of Babylon, what, if any
9 dealings do you have with the Posh Salon in
10 the Village of Babylon?

11 MR. TOSCA: Objection.

12 You can answer.

13 A. I don't recall, other than
14 visiting the store when we did our -- I don't
15 even know if it's in there now. They're gone.
16 Aren't they? I'm not sure. Nothing, it's a
17 store business in the village.

18 Q. You said you could recall, do you
19 visit any salons within the Village of
20 Babylon?

21 A. Yeah. In fact, I was in one the
22 other day. We did an interview there.

23 Q. What kind of interview?

24 A. For our Facebook page. I visit
25 all the businesses occasionally, it's part of

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1 R. SCORDINO

2 my job.

3 Q. Have you ever paid for services
4 at Posh Salon of Babylon Village Incorporated?

5 A. Do I look like a salon guy? Is
6 that what you're insinuating, Mr. Morris? No.

7 Q. Just to be clear, you have no
8 business dealings with Posh Salon --

9 A. No.

10 Q. -- of Babylon village?

11 A. No.

12 Q. As Village of Babylon mayor, do
13 you regularly report on your activities as
14 mayor to anyone?

15 A. To my secretary. If I'm not
16 going to be there, if I call in sick, which is
17 very rare. If I'm going to a different
18 meeting, I call in to her.

19 Q. Is there anyone to whom you
20 answer?

21 A. No.

22 Q. Do you report to anyone as
23 Village --

24 A. No. I'm the mayor of the
25 Village, I'm the one that oversees the whole

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1 R. SCORDINO

2 Village.

3 Q. Okay.

4 When you say oversees the whole
5 Village, can you describe, starting with who
6 it is you oversee?

7 A. Okay. Trustees, my deputy mayor
8 is right below me, to the side are the three
9 trustees, okay. My secretary is below me,
10 okay, she oversees most of the secretaries in
11 the different offices, reports back to me if
12 there's any problems. I oversee the
13 treasurer's office. I oversee the Building
14 Department. I oversee the Village attorney.
15 I oversee the Village clerk. I oversee the
16 Village court. I oversee the Highway
17 Department. I oversee the Sanitation
18 Department and I oversee the code enforcement.
19 Which is approximately about 80 people.

20 Q. You mentioned Department of
21 Public Works in there?

22 A. Yes, Highway.

23 Q. Any part of the Village of
24 Babylon that you do not oversee?

25 MR. TOSCA: Objection.

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1 R. SCORDINO

2 A. Parks is also included in there.

3 Q. Who are the persons who directly
4 report to you; for instance, you said you
5 oversee the attorney.

6 I assume you're talking about
7 Mr. Glass?

8 A. Gerard Glass, yes.

9 Q. Who else do you oversee that
10 directly reports to you?

11 A. They all report to me.

12 Q. Who from the treasurer's office
13 directly reports to you?

14 A. It would be the treasurer, Andrew
15 Reichel. R-E-I-C-H-E-L.

16 Q. Who from the Building Department
17 directly reports to you?

18 A. Debbie Longo and Steve Fellman.

19 Q. That is the same person who is
20 the building inspector?

21 A. Yes.

22 Q. There is only one attorney for
23 the Village of Babylon?

24 A. Right.

25 Q. You said the deputy mayor has to

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1 R. SCORDINO

2 report to you?

3 A. Right.

4 Q. Who is the deputy mayor?

5 A. Kevin Muldowney. All the
6 trustees do.

7 Q. When you say all the trustee, who
8 are those trustees?

9 A. Kevin Muldowney is the deputy
10 mayor, Tony Davida is a trustee, Mary Adams is
11 a trustee and Robyn Silvestri is a trustee.

12 Q. Anyone else?

13 A. Trustees?

14 Q. Um-hum.

15 A. No one else.

16 Q. Who in the Village of Babylon
17 Highway Department --

18 A. Skip Gardner, Charles Gardner.

19 Q. Who from the Village of Babylon
20 Parks reports to you?

21 A. Okay, I left out one other thing
22 too. Babylon Fire Department also reports to
23 me, it's usually the chief, Mike Golub.

24 Q. Who was the chief before Mike?

25 A. I think it was Paul Twardy.

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1 R. SCORDINO

2 Q. Who was the chief before Paul?

3 A. Kevin Marrow, M-A-R-R-O-W. I'm
4 sorry, I missed one there. Mike Golub, right
5 after Mike Golub was Scott Glyn, G-L-Y-N.

6 Q. Before Kevin Marrow, who was the
7 Babylon Fire Department person who reported to
8 you?

9 A. It was, let's see, it was Kevin
10 Marrow. Is that the last one you have?

11 Q. Um-hum.

12 A. Then you had Tony Cardalli,
13 C-A-R-D-A-L-L-I. I think it was Richie
14 Rotsman, Jeff Weber.

15 Q. What about Trustee Davida?

16 A. He was later on. That was a long
17 time ago.

18 Q. When was he the Babylon Fire
19 Department chief?

20 A. I'm not sure of the date he was
21 chief.

22 Q. You mentioned before these were
23 some of the persons who responded to
24 emergencies like overdoses.

25 A. They're four-year terms, these

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1 R. SCORDINO

2 guys; and they all move up in order, like, for
3 example, this April, Mike will leave as chief
4 and all the first assistants, second
5 assistants, third assistants move in, and the
6 Fire Department has another election for the
7 third assistant.

8 Q. Do you know when Tony Davida who
9 is now the trustee had position of chief of
10 the Village of Babylon Fire Department?

11 A. I'm not sure the date.

12 Q. Do you recall the decade?

13 A. Probably two decades, maybe even
14 three decades.

15 Q. The '90s, the '80s?

16 A. Probably the '90, early '90s.

17 Q. Who from the Village of Babylon
18 Parks Department reports to you?

19 A. Parks Department, under the
20 auspices of the Highway Department, Skip would
21 be the one I would talk to about it.

22 Q. You said code enforcement?

23 A. Yes.

24 Q. Who is that?

25 A. Bill Whittier.

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1 R. SCORDINO

2 Q. Anyone else?

3 A. No.

4 Q. What about secretaries? Who is
5 it that reports to you as secretary?

6 A. Suzanne Schettino,
7 S-C-H-E-T-T-I-N-O.

8 Q. Anybody else.

9 A. If there is a problem with one of
10 the areas, then it would be one of the people
11 in those offices that I would ask a question
12 about. For example, if there was a problem
13 with the Building Department, Debbie Longo I
14 would talk to if Steve Fellman wasn't there.
15 If Andrew wasn't there. I would talk to Jane
16 Barth who is the deputy treasurer.

17 Q. Anyone that we didn't mention
18 that reports directly to you?

19 A. I think you have them all. Fire
20 department you have, Parks, Highway, yes.

21 Q. All of the departments of Village
22 of Babylon --

23 A. Right.

24 Q. -- essentially answer to you as
25 the Village of Babylon mayor?

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1 R. SCORDINO

2 A. Um-hum.

3 Q. The Village of Babylon have a
4 clerk?

5 A. Yes.

6 Q. Village clerk. What is her name?

7 A. Jean Parker.

8 Q. Is she a Civil Service position?

9 A. She an appointment.

10 Q. Who appointed her?

11 A. Me.

12 Q. At whose pleasure, if anyone,
13 does she serve?

14 MR. TOSCA: Objection to form.

15 You can answer.

16 A. She is an appointment that I
17 appointed. I have the right to appoint a
18 person for that position.

19 Q. Can you hire or fire the Village
20 of Babylon clerk?

21 A. Sure.

22 Q. Is there another clerk, a
23 district clerk of the Village of Babylon?

24 A. Court clerk, district court
25 clerk?

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1 R. SCORDINO

2 Q. Um-hum.

3 A. Yes, Irene Vanoff, V-A-N-O-F-F.

4 Q. To whom does she report?

5 A. She reports to, I believe she
6 reports to the judge because the court is a
7 different situation, but she reports to the
8 judge; but if there are problems with Village
9 and not having to do with the court, she would
10 report to me.

11 Q. Does anyone else from the court
12 report to you in any other circumstance?

13 A. No.

14 Q. How do communicate with the
15 district clerk?

16 A. Go downstairs and talk to her.

17 Q. Were you ever the subject of
18 written communication from the district clerk?

19 A. I don't understand your question.

20 Q. Did you ever receive anything in
21 writing or give anything in writing to the
22 district clerk?

23 A. I very rarely do, everything is
24 verbal.

25 Q. When you say rarely do, in what

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1 R. SCORDINO

2 instances would that occur?

3 A. If I see something on a -- I
4 might call her and tell her rather than going
5 downstairs.

6 Q. When you say, see something, like
7 what?

8 A. If I wanted to -- if I saw that
9 there was going to be a warning for snowstorms
10 or flooding, I would call her up and tell her,
11 say, listen, you have to put that on the
12 website.

13 Q. When you say website, what
14 website are you --

15 A. Village website.

16 Q. Is the district clerk responsible
17 for doing that?

18 A. No. Village clerk. Not district
19 clerk. Which one are you talking about now?

20 Q. I was talking about the district
21 clerk.

22 A. Usually I have no -- you fouled
23 me up a little bit here. Go back a little
24 bit. If you were talking about the Village
25 clerk --

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1 R. SCORDINO

2 MR. MORRIS: I'm going to
3 withdraw the question.

4 Q. Does the Village of Babylon Board
5 have regularly-scheduled meetings?

6 A. Yes.

7 Q. When are those meetings?

8 A. Every second and fourth Tuesday
9 and every second, every second week in August,
10 there is not a fourth week in August and
11 December.

12 THE WITNESS: I have to go to the
13 men's room.

14 MR. MORRIS: Okay.

15 It's 2:26, off the record.

16 (Whereupon, a recess was taken
17 from 2:26 p.m. to 2:30 p.m.)

18 (Whereupon, a discussion was held
19 off the record.)

20 MR. MORRIS: Time now is 2:30.

21 Back on the record

22 Q. Mr. Scordino, other than the
23 meetings you just mentioned, are there other
24 meetings which you're aware of the trustees of
25 the Village of Babylon?

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1 R. SCORDINO

2 A. We have work sessions every other
3 Tuesday.

4 Q. Anything else?

5 A. We have director meetings or
6 department head meetings once every four
7 months, three months.

8 Q. Did you ever meet individually
9 with members of the Village of Babylon Board
10 or less than a majority of the members of the
11 Village of Babylon Board?

12 A. Yes. Playing golf.

13 Q. How often?

14 A. Social, twice a week, once a
15 week.

16 Q. You started to say, but for what
17 reason would you have those meetings?

18 A. Socially.

19 Q. Golf.

20 Anything else?

21 A. That's about it.

22 Q. Aside from work sessions,
23 socially, and golf, any other such meetings?

24 A. No.

25 Q. We mentioned the department heads

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1 R. SCORDINO

2 before quite in depth through it.

3 Is there anyone we missed here in
4 terms of oversight?

5 A. Can you repeat them again?

6 Q. Absolutely.

7 As the mayor of the Village of
8 Babylon, the treasurers' office, the Building
9 Department, the Village attorney, deputy
10 mayor, Code Enforcement, Babylon Village Fire
11 Department, the secretary, and the Department
12 of Highway reports to you; is that right?

13 A. Yes.

14 Q. Anyone else?

15 A. Unless I missed one, but I don't
16 think so. I think I got everybody.

17 Q. And there is no one to whom you
18 report?

19 A. No.

20 Q. As mayor of the Village of
21 Babylon, are you acquainted with Deborah
22 Longo?

23 A. Yes.

24 Q. Under what circumstance did you
25 first become acquainted with Deborah Longo?

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1 R. SCORDINO

2 A. At an interview I had with her
3 when she applied for the job.

4 Q. You said applied for the job.
5 What job was that?

6 A. The secretary to the Building
7 Department.

8 Q. When was that?

9 A. Approximately ten years ago.

10 Q. As mayor of Village of Babylon,
11 do you regularly interact with Deborah Longo?

12 A. I would say at least twice a day
13 for various things.

14 Q. Under what circumstances do you
15 interact with Deborah Longo?

16 A. Questions.

17 Q. Questions she asks you or
18 questions you ask her or something else?

19 A. Both. She might come in and ask
20 me a question. If I can't answer it or
21 Suzanne can't answer it, then she asks me and
22 we try to come up with an answer.

23 Q. She seeks your advice in that
24 regard?

25 MR. TOSCA: Objection.

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1 R. SCORDINO

2 A. Yes. I think she first goes
3 through the channels, she probably goes to the
4 building inspector first to see if they can
5 get the answer.

6 Q. Did you ever have a discussion
7 with her and the building inspector, as you
8 said, all at once?

9 A. Might be, if a new restaurant is
10 coming in and we want to lead them down the
11 right path with applications for permits and
12 stuff. If the building inspector is not there
13 and she's there, if I have a question, I might
14 call her over. Lot's of times when you're
15 opening up a business in the Village, there
16 are things they should know.

17 Q. And you help those persons in
18 that situation?

19 A. Yeah. Call them over and say,
20 listen, they're opening a business in the
21 Village, can you explain to them some of the
22 things they should be doing?

23 Q. Do you communicate with Deborah
24 Longo by electronic mail?

25 A. Occasionally.

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1 R. SCORDINO

2 Q. When you say, occasionally, on
3 what occasions?

4 A. Asking her about, I send her an
5 e-mail I can't answer, I send to it over the
6 Building Department from the workflow.

7 Q. How often do you communicate with
8 Deborah Longo by electronic mail?

9 A. Once a month.

10 Q. Under what circumstances do you
11 communicate with Deborah Longo by electronic
12 mail?

13 A. If I get a workflow, can't answer
14 it, I send it over to her to follow up.

15 Q. Does Deborah Longo report to you
16 as Village of Babylon mayor?

17 MR. TOSCA: Objection.

18 You can answer.

19 A. I would imagine so. I mean, if
20 she went through -- she is running the office
21 and she's there full time, she would come ask
22 if there were questions if I was there.

23 Q. Can you call upon Deborah Longo
24 any time?

25 A. Any time, I wouldn't bother her

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

215

1 R. SCORDINO

2 at home.

3 Q. Can you call upon Deborah Longo
4 any time she is working?

5 A. Yes.

6 Q. Is Deborah Longo's employment
7 position protected under New York Civil
8 Service Law?

9 MR. TOSCA: Objection.

10 A. I believe she is.

11 Q. Did you select Deborah Longo for
12 her position in the Village of Babylon?

13 A. Yes. The procedure that we have
14 is that usually we take it off the list of
15 prospective people. We do a search for them,
16 break it down to three people, and we ask for
17 interviews, and they come in and they're
18 interviewed by Suzanne, and probably Suzanne
19 first, then I come in and I interview her
20 also, and we come up with, out of the three, a
21 selection, with one selection. That's
22 basically how the interviews happen.

23 Q. Do you have the power to
24 terminate Deborah Longo's employment?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

216

1 R. SCORDINO

2 MR. TOSCA: Objection.

3 Q. Does Deborah Longo drive a
4 Village of Babylon vehicle?

5 A. No.

6 Q. As the mayor of the Village of
7 Babylon, are you acquainted with Suzanne
8 Schettino?

9 A. Um-hum.

10 Q. Under what circumstance did you
11 first become acquainted with Suzanne
12 Schettino?

13 A. She worked in the Building
14 Department for many years, and when the job
15 opening happened, when my secretary Marybeth
16 Wright retired, I put her in that position as
17 an appointment.

18 Q. You were responsible for
19 Ms. Schettino being hired?

20 A. No. Hired where?

21 Q. At the Village of Babylon.

22 A. In what position?

23 Q. Any capacity.

24 A. You got to be specific.

25 Q. Have you been responsible for

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Suzanne Schettino --

3 A. No.

4 MR. TOSCA: Let him finish the
5 question.

6 Q. As mayor of the Village of
7 Babylon, do you regularly interact with
8 Suzanne Schettino?

9 A. Absolutely.

10 Q. Under what circumstances do you
11 interact with Suzanne Schettino?

12 A. I talk to her. If there is a
13 question I might need to have an answer, I
14 might pass over a workflow or write, print out
15 the workflow and hand it to her. She gives me
16 a list of messages, you know, people calling,
17 I have to answer the messages. If there's a
18 problem she'll call me. If I'm not there or
19 if I'm on the road somewhere, she'll call me.
20 Constantly every day I'm checking in with her
21 all the time.

22 Q. When you say pass along the
23 workflow, how would you do that?

24 A. I print it out and hand it to
25 her.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

218

1 R. SCORDINO

2 Q. Do you communicate with Suzanne
3 Schettino by electronic mail?

4 A. Yes.

5 Q. How often do you communicate with
6 Suzanne Schettino by --

7 A. Not that often.

8 Q. -- electronic mail?

9 A. Once a month.

10 Q. Under what circumstances do you
11 communicate with Ms. Schettino by electronic
12 mail?

13 A. If she's not there, you know,
14 I'll send it over to her e-mail.

15 Q. When you say her e-mail?

16 A. Her mail, her e-mail. Her
17 e-mail.

18 Q. Is she provided an e-mail address
19 by the Village of Babylon?

20 A. Yes.

21 Q. Does Suzanne Schettino report to
22 you as Village of Babylon mayor?

23 MR. TOSCA: Objection.

24 You can answer.

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

219

1 R. SCORDINO

2 Q. Can you call upon Suzanne
3 Schettino any time okay she's working?

4 A. Yes.

5 Q. Is Suzanne Schettino --

6 A. And when she's not working.

7 Q. Is Suzanne Schettino protected
8 under New York Civil Service Law?

9 MR. TOSCA: Objection.

10 You can answer.

11 A. I'm not a hundred percent sure on
12 that because I thing she accrues time as
13 building inspector. I'm not sure.

14 Q. Was Suzanne Schettino appointed?

15 A. Yes.

16 Q. By whom?

17 A. I'm sorry. Let me -- again, you
18 have to clarify because she worked in the
19 Building Department under a different
20 administrator, hired for that position, when
21 an opened happened during me as mayor, then,
22 appointed her out of the Building Department
23 to become my secretary administrator.

24 Q. Did you select Suzanne Schettino
25 as secretary administrator?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

220

1 R. SCORDINO

2 A. Yes.

3 Q. Do you have the power to
4 terminate her employment?

5 A. Yes.

6 Q. Does Ms. Schettino drive a
7 Village of Babylon vehicle?

8 A. No.

9 Q. As mayor of the Village of
10 Babylon are you acquainted with Stephen
11 Fellman?

12 A. Um-hum.

13 Q. Under what circumstances did you
14 first become acquainted with Stephen Fellman?

15 A. He was there as the building
16 inspector probably back when I was a trustee,
17 in the middle there somewhere. I'm not sure
18 what year he was hired.

19 Q. So you first met him when you
20 were trustee?

21 A. Yes.

22 Q. Did you have any personal or
23 social interaction with him previous?

24 A. No.

25 Q. As mayor of the Village of

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

221

1 R. SCORDINO

2 Babylon, do you regularly interact with
3 Stephen Fellman?

4 A. Yes.

5 Q. Did you communicate with him by
6 electronic mail?

7 A. No.

8 Q. Do you text message him?

9 A. No.

10 Q. How often do you communicate with
11 Stephen Fellman by electronic mail, if at all?

12 A. None.

13 Q. Does Stephen Fellman report to
14 you as Village of Babylon mayor?

15 A. Yes.

16 Q. Can you call Stephen Fellman at
17 any time?

18 A. Yes.

19 Q. Is Stephen Fellman protected
20 under New York Civil Service Law?

21 MR. TOSCA: Objection.

22 You can answer.

23 A. I don't think so.

24 Q. Was Stephen Fellman appointed?

25 A. He -- I guess yeah, he's

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

222

1 R. SCORDINO

2 appointed every year.

3 Q. Did you select Stephen Fellman as
4 building inspector of Village of Babylon?

5 A. No.

6 Q. Who did?

7 A. Don Conroy.

8 Q. When you say he's appointed every
9 year, who appoints him?

10 A. It's a resolution at our
11 reassignment meeting which is held every
12 April.

13 Q. Is there a recommendation or
14 process by which Mr. Fellman is chosen as
15 opposed to other building inspectors?

16 A. I guess, if we had a problem with
17 him, we would venture out and look for a
18 different building inspector. As of now, he
19 does a good job.

20 Q. Don Conroy initially appointed
21 Stephen Fellman?

22 A. Right.

23 Q. After Don Conroy was gone, who
24 appointed Stephen Fellman?

25 MR. TOSCA: Over objection, you

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

223

1 R. SCORDINO

2 can answer.

3 A. Myself and the Board.

4 Q. Tell me exactly how you and the
5 Board appoint Stephen Fellman.

6 A. Okay. Every April, it's usually
7 the first Monday in April, he is done at our
8 reassignment meeting, okay. It's one of the
9 resolutions that we put forth that is passed
10 at a public Village Board meeting and accepted
11 by the vote of the Board of Trustees.

12 Q. Do you have the power to
13 terminate Stephen Fellman's employment?

14 A. Yes.

15 Q. Are you the one to bring the
16 resolution to the Board in regard to Stephen
17 Fellman's employment?

18 A. Yes.

19 Q. Can any trustee terminate an
20 employee?

21 MR. TOSCA: Objection.

22 A. No.

23 Q. Can any trustee bring a
24 resolution to the Village of Babylon Board to
25 terminate an employee?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

224

1 R. SCORDINO

2 A. Before that would happen, there
3 would have to be some discussion with the
4 rest of Board of Trustees.

5 Q. Can you tell me, can a trustee
6 bring a resolution to terminate an employee?

7 A. I said, yeah, but there would
8 have to be some discussion before that. You
9 just can't arbitrarily -- I guess you can, but
10 with our group, we all sit down and discuss
11 it.

12 Q. In other words, in the Village of
13 Babylon, they have to bring it to you first?

14 A. Right, they have to have some
15 discussion with it at either a work session or
16 a meeting meet we have.

17 Q. Does Stephen Fellman drive a
18 Village of Babylon vehicle?

19 A. No.

20 Q. To whom does Stephen Fellman
21 report?

22 A. To me.

23 Q. As mayor of the Village of
24 Babylon, are you acquainted with Mary Adams?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

225

1 R. SCORDINO

2 Q. Under what circumstance did you
3 first become acquainted with Mary Adams?

4 A. Her dealings with the Babylon
5 Tuna Club and the Babylon Beautification
6 Society. First woman president of the Babylon
7 Tuna Club.

8 Q. Tuna like the game fish?

9 A. Like bluefin.

10 Q. Like bluefin.

11 A. I thought you really knew about
12 fishing and stuff. Now you're letting me down
13 here.

14 Q. The Tuna Club and what was the --

15 A. Beautification Society. She's
16 done a lot of volunteerism and, of course, you
17 know, Babylon being so small, we get to see a
18 lot of different people and recognize faces,
19 and she is a very, very hard worker.

20 Q. As the mayor of the Village of
21 Babylon, do you regularly interact with Mary
22 Adams?

23 A. Yes.

24 Q. Under what circumstance do you
25 interact with Mary Adams?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. Mary Adams is also oversees the
3 parks and also oversees our greenhouse which
4 is part of Highway Department. She is in
5 charge of our Facebook. She does a lot of
6 work. She does a lot of work with the Girl
7 Scouts for us.

8 Q. When you say for us, the Village
9 of Babylon?

10 A. Village of Babylon.

11 Q. Do you communicate with Mary
12 Adams by electronic mail?

13 A. No.

14 Q. Have you ever sent Mary Adams an
15 e-mail?

16 A. No.

17 Q. Have you ever received an e-mail
18 from Mary Adams?

19 A. Yes, occasionally.

20 Q. From what e-mail account did you
21 receive such e-mail?

22 A. Usually on my phone, she sends me
23 a message.

24 Q. When you say on your phone, are
25 you referring to the Samsung phone?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

227

1 R. SCORDINO

2 A. Yes.

3 Q. When you say a message, do you
4 receive electronic mails on your Samsung
5 phone?

6 A. Yes.

7 Q. How long have you had the Samsung
8 phone for?

9 A. I don't know. Five years. I'm
10 not sure.

11 Q. Have you ever deleted any
12 electronic mail off that Samsung phone in last
13 two years?

14 A. I wouldn't know how to do it.

15 Q. Does Mary Adams report to you as
16 the Village of Babylon mayor?

17 A. Um-hum.

18 Q. Is that a yes?

19 A. Yes.

20 Q. Can you call Mary Adams any time?

21 A. Yes.

22 Q. Is Mary Adams protected under
23 New York State Civil Service Law?

24 A. No.

25 MR. TOSCA: Objection.

John Lepper v. Village of Babylon
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228

1 R. SCORDINO

2 Q. Is Mary Adams appointed?

3 A. Well, she was appointed by the
4 Better Babylon Campaign Committee and then ran
5 for her position.

6 Q. When you say appointed, in what
7 year was she appointed by Better Babylon
8 Committee?

9 A. Eight years, six years. I think
10 six years.

11 Q. Do you have the power to
12 terminate Mary Adams' employment?

13 MR. TOSCA: Objection.

14 You can answer.

15 A. No.

16 Q. Do you have any dealings with
17 Mary Adams aside from her work within the
18 Village of Babylon?

19 A. No.

20 Q. Has Mary Adams acted as a realtor
21 for any of the purchases or sales within the
22 Village of Babylon?

23 A. No.

24 Q. Does Mary Adams drive a Village
25 of Babylon vehicle?

John Lepper v. Village of Babylon
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229

1 R. SCORDINO

2 A. No.

3 Q. In the Village of Babylon, there
4 are various departments, correct?

5 A. Um-hum.

6 Q. You have referred to some of the
7 persons and their names and titles, correct?

8 A. Yes.

9 Q. Are these persons Civil Service
10 or appointed?

11 A. Civil service.

12 Q. Do any of these persons drive a
13 Village of Babylon vehicle?

14 A. Yes.

15 Q. Who drives a Village of Babylon
16 vehicle aside from yourself?

17 A. Skip Gardener and four chiefs.

18 Q. When you say four chiefs, to whom
19 are you referring to?

20 A. Chief, first assistant, second
21 assistant, third assistant.

22 Do you want it right now who it
23 is?

24 Q. Please.

25 A. Mike Olive, Joe Fracalverri,

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

230

1 R. SCORDINO

2 F-R-A-C-A-L-V-E-R-R-I, Matt Arrendale, and
3 Jimmy Meager. And Code Enforcement also has a
4 car, Bill Whittier.

5 Q. Anyone else?

6 A. That's it.

7 Q. Are there decals on this car,
8 insignias, anything that demarcates that the
9 ownership of such a vehicle is Village of
10 Babylon?

11 A. They have Village of Babylon
12 license plates on all those vehicles.

13 Q. Do you have a Village of Babylon
14 license plate on your vehicle?

15 A. Yes, I do.

16 Q. Are there any other persons whom
17 you have not mentioned who drive a Village of
18 Babylon vehicle?

19 A. No. I don't think so. I think
20 we got all of them.

21 Q. Is there anyone else to whom we
22 did not discuss who reports to you as the
23 Village of Babylon mayor?

24 A. Got all of them.

25 Q. As mayor of the Village of

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

231

1 R. SCORDINO

2 Babylon, are you acquainted with Gerard Glass?

3 A. Yes.

4 Q. Under what circumstance did you
5 first become acquainted with Gerard Glass?

6 A. I know he was doing work for
7 Lindenhurst. We had our past attorney retire
8 and we were in search of a replacement, and as
9 all the mayors talk to each other, I gave over
10 a call to Linderhurst and asked them about
11 Gerard and how he handles the Village of
12 Lindenhurst, and they were very, very
13 satisfied, and I felt that he could do a good
14 job, so I made the recommendation to the
15 rest of the Board. They felt fine with that,
16 we put a resolution in. At that same meeting
17 that happens the first Monday in April, the
18 resolution went in to hire him.

19 Q. What was the first interaction
20 you had with Mr. Gerard Glass?

21 A. When he came in, I told him we
22 were going to hire him.

23 Q. First time you spoke to him, you
24 told him you were going to hire him?

25 A. Yes. I knew him from various --

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

232

1 R. SCORDINO

2 not know him personally, but I heard a
3 Lindenhurst mayor talk about how good he is.
4 I figured he would be good asset for us for
5 Village attorney.

6 Q. Who was the mayor to which you
7 spoke who recommended Mr. Glass?

8 A. Bill Brennan -- Tom Brennan of
9 Lindenhurst.

10 Q. Do you know Gerard Glass
11 socially?

12 A. No.

13 Q. Did you know Mr. Glass when he
14 was a Suffolk County legislator?

15 A. No.

16 Q. As mayor of the Village of
17 Babylon, do you regularly interact with Gerard
18 Glass?

19 A. Yes.

20 Q. Under what circumstance do you
21 interact with Gerard Glass?

22 A. If there is a problem, if he has
23 concerns, he usually calls me. He learned the
24 first month that I don't answer texts, so I
25 don't text him back.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

233

1 R. SCORDINO

2 Q. Do you communicate with him by
3 electronic mail?

4 A. No.

5 Q. Did you ever receive an
6 electronic mail from Gerard Glass?

7 A. It's usually sent to my -- any
8 correspondence is usually sent to my
9 secretary, Suzanne.

10 Q. Have you received any electronic
11 mail from Mr. Glass?

12 A. No.

13 Q. Does Gerard Glass report to you
14 as Village of Babylon mayor?

15 A. Yes.

16 Q. Can you call Gerard Glass at any
17 time?

18 A. Yes.

19 Q. Is Mr. Glass protected under
20 New York State Civil Service Law?

21 MR. TOSCA: Objection.

22 You can answer.

23 A. I don't believe so.

24 Q. Is Gerard Glass appointed?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

234

1 R. SCORDINO

2 Q. Who whom?

3 A. Village Board.

4 Q. Who made the appointment?

5 A. Village Board.

6 Q. Were you the one that brought the
7 resolution or was it the Village of Babylon
8 Board?

9 A. The Board.

10 Q. Basically, as the Village of
11 Babylon mayor, you oversee the Village of
12 Babylon?

13 A. Yes.

14 Q. Basically, the CEO, so to say?

15 MR. TOSCA: Objection.

16 A. I would say.

17 Q. In the course or your regular
18 activities as mayor or the Village of Babylon,
19 do you correspond with anybody by electronic
20 mail?

21 A. I might do an e-mail to some of
22 the officers, but it's very, very infrequent,
23 so I guess the answer to your question would
24 be yes.

25 Q. With whom do you correspond by

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

235

1 R. SCORDINO

2 electronic mail?

3 A. Highway Department, Building
4 Department, Treasurer's office, court very,
5 very rarely I would say.

6 Q. Where are those e-mails stored?

7 A. I guess they would be on my
8 computer.

9 Q. When you say on your computer,
10 computer within the Village of Babylon?

11 A. Yes.

12 Q. Where is that storage located?

13 A. I don't understand the question.

14 Q. Physically, where is the storage
15 of the electronic mail?

16 A. On the computer.

17 Q. And the physical location
18 within --

19 A. In my office.

20 Q. So it's in the Village Town Hall.

21 A. Village Hall.

22 Q. Main Street, Village of Babylon,
23 New York?

24 A. Right.

25 Q. Who is responsible for

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

236

1 R. SCORDINO

2 information technology, IT in the Village of
3 Babylon?

4 A. Kevin Muldowney.

5 Q. Aside from the Facebook page
6 which you mentioned earlier, does the Village
7 of Babylon have any social media?

8 A. Yes.

9 Q. What is it?

10 A. Facebook page.

11 Q. Anything other than a Facebook
12 page?

13 A. No.

14 Q. Do you or other elected officials
15 within the Village of Babylon use Facebook or
16 Twitter to communicate with constituents?

17 A. I think anything that is
18 communicated on the Facebook goes through
19 Mary.

20 Q. What about Twitter?

21 A. I don't believe we have a
22 Twitter.

23 Q. What about the elected officials,
24 do they have Twitters?

25 A. I don't believe so.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

237

1 R. SCORDINO

2 Q. Do they tweet?

3 A. I don't believe so.

4 Q. In the course of your regular
5 activities as mayor of the Village of Babylon,
6 do you communicate with your constituents
7 through e-mail?

8 A. Sometimes.

9 Q. When you say sometimes, on what
10 occasion?

11 A. If they're requesting a phone
12 call or expressing a concern to me, I will
13 comment back to them, please give me a call.
14 Thank you very much for your concern. Please
15 give me a call in my office.

16 Q. Any such concerns or call come in
17 regarding John Lepper?

18 A. Just that one from Tony Kinnier.

19 Q. Where are such e-mails
20 maintained?

21 MR. TOSCA: Objection.

22 You can answer.

23 A. On my computer at 153 West Main
24 Street in my office, second floor.

25 Q. Is that computer secured by a

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

238

1 R. SCORDINO

2 password?

3 A. Yes.

4 Q. Aside from the election campaign
5 we mentioned earlier, have you actively
6 participated in any other election campaign?

7 A. No.

8 Q. Have you been part of an election
9 campaign outside of the Village of Babylon?

10 A. No.

11 Q. Are you acquainted with an
12 individual by the name of Peter, or Peter
13 Messina?

14 A. Pete Messina works for us.

15 Q. When you say for us --

16 A. Village, he is a garbage man.

17 Q. What is his title?

18 A. Laborer.

19 Q. Is he full-time or part-time?

20 A. Full-time.

21 Q. Does he do anything other than a
22 laborer for the Village of Babylon?

23 A. No.

24 Q. When did you first become
25 acquainted with Mr. Messina?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

239

1 R. SCORDINO

2 A. Twenty years ago.

3 Q. How and under what circumstances
4 did you become acquainted with Mr. Messina?

5 A. As one of our employees.

6 Q. Do you recognize the name Misner
7 Auto Body?

8 A. Yes.

9 Q. Do you know whether Mr. Messina
10 is associated in any way with or employed by
11 Misner Auto Body?

12 A. No idea.

13 Q. Under what circumstances did you
14 come to learn the name Misner Auto Body?

15 A. I believe they fix some of our
16 trucks or cars, too.

17 Q. When was the last time you saw
18 Mr. Messina?

19 A. Last week.

20 Q. Have you ever done business with
21 Mr. Messina?

22 A. I sold him my car, the original
23 bluefin.

24 Q. Anything else?

25 A. That's it.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

240

1 R. SCORDINO

2 Q. Have you had occasion to have any
3 motor vehicles repaired by or under the
4 supervision of Mr. Messina?

5 A. No.

6 Q. Have you had occasion to utilize
7 Misner Auto Body to fix a vehicle?

8 MR. TOSCA: Objection.

9 A. It's usually done by our Highway
10 Department head Skip Gardener. He gets lowest
11 price. I don't know if Misner comes in that
12 low. I'm not affiliated with that.

13 Q. Did you ever have a vehicle that
14 you drove fixed by Misner Auto Body?

15 MR. TOSCA: Objection.

16 You can answer.

17 A. I have no idea.

18 Q. Did you ever have an accident
19 where you hit four cars with you truck?

20 A. Four cars, no.

21 Q. Two cars?

22 A. No. I told you the one car.

23 Q. You hit one car?

24 A. Yes.

25 Q. What were the circumstances under

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 which caused you to need repair from hitting
3 that one car?

4 MR. TOSCA: Objection.

5 You can answer.

6 A. Coming out of the side street,
7 vehicle was going north and south and I came
8 out, I didn't see him, he didn't see me, and I
9 hit his back bumper.

10 Q. You hit this person in the rear?

11 A. On the side, side panel in the
12 rear.

13 Q. Did the police investigate the
14 accident?

15 A. No.

16 Q. Was there a police accident
17 report for the accident?

18 A. I don't believe so.

19 Q. Did you file an MV104 for the
20 accident?

21 A. I left it up to the Highway
22 Superintendent.

23 Q. The answer is you did not?

24 A. No.

25 Q. You said you left it up to --

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. Skip Gardener?

3 Q. Did you report the accident to an
4 insurance carrier?

5 A. Yes, through our Village.

6 Q. What was the name of the
7 insurance carrier to which you reported the
8 accident?

9 MR. TOSCA: Objection.

10 You can answer.

11 A. Norton Siegle, N-O-R-T-O-N
12 S-I-E-G-L-E.

13 Q. Were there any personal injuries
14 or property damage associated with that
15 accident?

16 A. No.

17 Q. What time of day did this
18 accident occur?

19 A. Around 5:30.

20 Q. 5:30 in the morning 5:30 --

21 A. Afternoon.

22 Q. What was the extent of the
23 property damage?

24 A. There was no damage to my car,
25 very minimal to his car.

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1 R. SCORDINO

2 Q. Any legal action of any kind
3 associated with the accident?

4 A. No.

5 Q. Who paid for the repairs?

6 A. I guess the Village did.

7 Q. Do you know who paid for the
8 repairs to the vehicle?

9 A. No.

10 Q. When you say you guess the
11 Village did --

12 A. Village paid. If there was any
13 repairs, the Village did.

14 Q. Do you know the gentleman whose
15 car to whom you hit?

16 A. No.

17 Q. Did you ever exchange insurance
18 with that person?

19 A. Left it up to Skip Gardener.
20 Code Enforcement was also there.

21 Q. After you hit the person, what,
22 if anything, did you do?

23 MR. TOSCA: Objection.

24 You can answer.

25 A. I didn't do anything. It was

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

244

1 R. SCORDINO

2 left up to the Highway Superintendent.

3 Q. From where were you coming?

4 A. Work, Village Hall.

5 Q. As you left Village Hall, which
6 direction, which roadway did you proceed in
7 which direction?

8 A. I was going eastbound. Coming
9 out of Trolley Line Road, Railroad Avenue, he
10 was going northbound on Deer Park Avenue.

11 Q. Has your family ever used the
12 Village of Babylon fuel depot to fuel their
13 personal vehicles?

14 MR. TOSCA: Objection.

15 A. No.

16 Q. Do you have a fuel card?

17 A. Yes.

18 Q. By whom is that fuel card
19 provided?

20 A. Village. You're talking about
21 the tab for the Village fill-up, or are you
22 talking about a credit card?

23 THE WITNESS: I have to take
24 another break, guys.

25 MR. MORRIS: Time the 3:04.

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 (Whereupon, a recess was taken
3 from 3:04 p.m. to 3:10 p.m.)

4 MR. MORRIS: 3:10, back on the
5 record.

6 Q. Mr. Scordino, any other accidents
7 with your Village of Babylon vehicle?

8 A. No.

9 Q. In other words, aside from the
10 accidents we just discussed, you have never
11 been involved in any other sort of accident or
12 as you described before fender bender?

13 A. That's it.

14 Q. Anyone else drive the motor
15 vehicle that is provided to you by the Village
16 of Babylon?

17 A. No.

18 Q. What is the license plate number
19 on the vehicle that you drive as part of the
20 Village of Babylon?

21 A. Just says Village of Babylon on
22 it, has the number. I don't know what the
23 number is.

24 Q. Has it changed over the years?

25 A. I'm not sure. I'm not a hundred

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

246

1 R. SCORDINO

2 percent sure. I don't register the car, the
3 Highway Superintendent does.

4 Q. Is there any other vehicle that
5 you utilize aside from Village of Babylon
6 vehicle?

7 A. I occasionally use my wife's.

8 Q. What car is your wife's?

9 A. It's a white Chevy SS.

10 Q. Did you ever operate the Village
11 of Babylon vehicle outside the area of the
12 village of Babylon or its immediate vicinity?

13 A. Yes.

14 Q. Where is the Village of Babylon
15 vehicle that you drive regularly stored,
16 parked?

17 A. In front of my house.

18 Q. Is it garaged?

19 A. No.

20 Q. To your knowledge, how many
21 vehicles does the Village of Babylon own?

22 A. I would say around 50.

23 Q. You use the Village of Babylon
24 vehicle that is given to you to drive from
25 your home to work?

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. Yes.

3 Q. How many Village officials or
4 employees are allowed to use their Village of
5 Babylon vehicles to drive from home to work?

6 A. Six.

7 Q. Who are those six persons?

8 A. Skip Gardener, he is our first
9 responder also in the Village. Bill Whittier,
10 he is in charge of code enforcement. Myself
11 and the four chiefs, that's seven.

12 Q. Are the vehicles of which these
13 persons drive provided with a license plate
14 shield of any sort?

15 A. I'm not sure. I know mine
16 doesn't.

17 Q. Do you have a license plate
18 shield covering your license plate?

19 A. No.

20 Q. Anything you added to the
21 vehicle, plate or cover on top of the license
22 plate?

23 A. No.

24 Q. How is your Village of Babylon
25 vehicle maintained?

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. Village.

3 Q. By whom?

4 A. Village.

5 Q. Which person within the Village
6 of Babylon?

7 A. Andrew, Andrew Alvarez,
8 A-L-V-A-R-E-Z, he is the head of the mechanic
9 shop.

10 Q. When you say the head of the
11 mechanic shop, which mechanic shop?

12 A. Village, we have a mechanic shop
13 under the Highway Department.

14 Q. To whom does Mr. Alvarez answer?

15 A. Skip Gardener.

16 Q. Skip, in turn, answers to you?

17 A. Right.

18 Q. How many boats does the Village
19 of Babylon own?

20 A. One.

21 Q. Why would the Village of Babylon
22 own a both?

23 MR. TOSCA: Objection.

24 You can answer.

25 A. As you know, we have many canals

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 in our Village and we have, the boat is used
3 to do water rescue and fight fires from the
4 water side. It's under the Babylon Fire
5 Department.

6 Q. What type of boat is it?

7 A. Center console, I think it's
8 25 feet outboard.

9 Q. Who has access to this boat?

10 A. The fire department.

11 Q. When was the boat first
12 purchased?

13 A. Ten years ago.

14 Q. Is the boat ever utilized to
15 access Fire Island?

16 A. No.

17 Q. Where is the Village of Babylon
18 boat docked?

19 A. Lewis Circle, Lewis Pond.

20 Q. Lewis Circle, that's part of the
21 Village of Babylon?

22 A. Yes, Lewis Pond.

23 Q. That's not privately owned?

24 A. No, it's Village owned.

25 Q. Are you acquainted with an

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 individual by the name Chris or Christopher
3 Lewis?

4 A. Yes. Yes.

5 Q. When did you first become
6 acquainted with Mr. Lewis?

7 A. Chris Lewis does our web page
8 along with Jean Parker.

9 Q. What circumstance did you first
10 become acquainted with Mr. Lewis?

11 A. When he was doing our, I guess he
12 was doing our web page and Pat Corley
13 (phonetic), I think, who was our past Village
14 clerk, hired or asked him to maintain our
15 page, and I said fine. She was fine with him,
16 so I don't get involved in that.

17 Q. When you say you don't get
18 involved, Mr. Lewis maintains the Village of
19 Babylon website?

20 A. Along with Jean Parker who is the
21 Village clerk.

22 Q. How is Mr. Lewis paid?

23 A. I don't believe -- I think he
24 does it -- it's a very, very minimal fee, if
25 there is one, but I think he does it gratis.

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1 R. SCORDINO

2 Q. Who would know?

3 A. Village clerk.

4 Q. Ms. Marie Parker [sic].

5 A. Yes.

6 Q. Are there any contracts between
7 the Village of Babylon and Mr. Lewis?

8 A. Yes.

9 Q. What contact is that?

10 A. I think it's a resolution also,
11 and I think the contract is drawn up with Jean
12 Parker. She would know.

13 Q. What's the contract for?

14 A. His services.

15 Q. Services as what?

16 A. As the web page organizer, I
17 guess it would be called.

18 Q. Webmaster.

19 A. Webmaster, that's a good word.

20 Q. This contract for the webmaster,
21 this was approved by the Village of Babylon
22 Board?

23 A. Yes.

24 Q. Is there any other capacity of
25 which Mr. Lewis does business with the Village

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1 R. SCORDINO

2 of Babylon?

3 A. No.

4 Q. Is there any personal capacity in
5 which you do business with --

6 A. No.

7 Q. -- Mr. Lewis?

8 The boat earlier, is registered
9 with the State of New York?

10 A. I imagine it would be, it's got
11 to qualify.

12 Q. Do you know if the boat owned by
13 the Village of Babylon is documented by the
14 United States Coast Guard?

15 A. I'm pretty sure it is. I can't
16 imagine it wouldn't be be.

17 Q. Who would know?

18 A. Chief.

19 Q. Chief of?

20 A. Golab.

21 Q. Of the Village of Babylon?

22 A. Have you ever visited the Oak
23 Beach Inn?

24 A. Years ago, years ago when it was
25 opened. Actually, it was first opened my

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1 R. SCORDINO

2 senior year, and my cousin brought me over
3 there to have my first alcoholic beverage.

4 Q. You said your senior year --

5 A. Yeah, that would be 1967.

6 Q. Your senior year of high school?

7 A. Did you ever go there; were you
8 born yet because I went there when the floors,
9 you could look down and watch the inlet go in
10 and out while you were standing there.

11 Q. Under what circumstances have you
12 visited the Oak Beach Inn?

13 A. That was the only time.

14 Q. Never been there since?

15 A. No.

16 Q. Does the Village of Babylon have
17 any jurisdiction over Fire Island?

18 MR. TOSCA: Objection.

19 A. No.

20 Q. Any jurisdiction over Oak Beach?

21 A. No. Only fire. It's one of our
22 fire districts.

23 Q. Does the jurisdiction of Village
24 of Babylon end at the shore of Fire Island's?

25 A. No. It ends at the shoreline at

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 the south part of the Great South Bay. The
3 only jurisdiction we have on the Fire Island
4 side is the two fire districts, two fire
5 districts east and west fire districts that
6 are owned by the Town.

7 Q. Are you aware of any dead bodies
8 that were found recently within the Village of
9 Babylon?

10 MR. TOSCA: Objection.

11 You can answer.

12 A. Yes.

13 Q. What dead bodies were found
14 within the Village of Babylon recently?

15 A. No.

16 Q. You saying there were not?

17 A. No.

18 Q. I thought you said yes.

19 You mentioned earlier Skip
20 Gardener; is that right?

21 A. Yes.

22 Q. When did you first become
23 acquainted with Mr. Gardener?

24 A. When I was in high school.

25 Q. Now, Mr. Gardener has

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 associations with the Village of Babylon,
3 correct?

4 A. Um-hum.

5 Q. What associations does he have?

6 A. Highway Superintendent.

7 Q. Aside from Highway

8 Superintendent, does he maintain any other
9 associations with the Village of Babylon?

10 A. He's also a member of the fire
11 department and he been there over 50 years.
12 He knows a lot of people, does a fantastic job
13 to keep Babylon beautiful.

14 Q. The upstate home that, and was in
15 Coshaton (phonetic)?

16 A. Cohecton.

17 Q. Cohecton.

18 Is there a John Deere
19 utility-type vehicle on that property?

20 A. Yes. No, not a John Deere, no.
21 I don't have a John Deere.

22 Q. John Deere-type vehicle?

23 MR. TOSCA: John Deere what?

24 THE WITNESS: Type vehicle.

25 Q. Is there such a vehicle on that

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1 R. SCORDINO

2 property?

3 A. Lawnmower, John Deere, I don't
4 know what you're talking about. There's a lot
5 of John Deere type things, so you have to be
6 more specific, please.

7 Q. Do you have a vehicle for
8 maintenance of the property?

9 A. Kutoba Tractor K-U-T-O-B-A.

10 Q. How long have you been using the
11 utility-type vehicle?

12 MR. TOSCA: Objection.

13 You can answer.

14 A. Four years. I think it's
15 four-years old.

16 Q. How did you obtain the
17 utility-type vehicle?

18 MR. TOSCA: Objection.

19 A. Bought it.

20 Q. Does the Incorporated Village of
21 Babylon own the similar type of vehicle?

22 A. No.

23 Q. Does the Incorporated Village of
24 Babylon make purchases through a list
25 negotiated through the State of New York?

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1 R. SCORDINO

2 A. Yes.

3 Q. Where is that list maintained?

4 A. I would imagine it's in the
5 Highway Department. You're talking about bid
6 prices, you're talk about my vehicle,
7 everything is done by bid. We got the New
8 York State Bid, could be Town of Babylon Bid,
9 could be Suffolk County Bid. Everything is
10 done by -- in the bid process.

11 Q. That bid process is established
12 by New York State, correct?

13 A. Yes.

14 Q. Have you or your family purchased
15 anything for your own use from that New York
16 State list?

17 A. No. I really object -- I want to
18 interject something here, Mr. Morris, because
19 you're indicating that I'm doing something
20 illegal, and I don't know where you're getting
21 your information from, somebody must be
22 feeding you. I just want to let you know,
23 okay, I'm probably the most honest person
24 there is. I don't need to steal money, I
25 don't need to steal services, okay. You're

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1 R. SCORDINO

2 insinuating that.

3 Q. I'm asking you questions.

4 A. Did you pay it with a bundle of
5 money? That's insinuating, okay, that's
6 insinuating.

7 Q. Sir, I'm ask you questions.

8 You're attorney is objecting --

9 A. And you wrote the questions,
10 okay. You're insinuating, you're going down
11 that trail again.

12 Q. Did the --

13 MR. TOSCA: All right, did you --

14 MR. MORRIS: I'm literally asking
15 a question. I'm literally speaking.

16 MR. TOSCA: There is no question,
17 in light of --

18 MR. MORRIS: If you want to take
19 a break in light --

20 MR. TOSCA: There's no question.
21 I'd like to take a break.

22 MR. MORRIS: Note the time, it's
23 3:25. We'll go off record at the
24 request of the defendant.

25 (Whereupon, a recess was taken

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1 R. SCORDINO

2 from 3:25 p.m. to 3:30 p.m.)

3 MR. MORRIS: Time now is 3:30.

4 Back on the record.

5 Q. Mr. Scordino, did you discuss
6 your testimony during the break?

7 MR. TOSCA: Objection.

8 Don't answer the question.

9 Q. I'm not asking what you said.
10 I'm asking if you spoke about your testimony.

11 MR. TOSCA: Objection.

12 Don't answer the question.

13 MR. MORRIS: Why are you telling
14 him not to answer. I'm asking if you
15 had a conversation, like Judge Brown
16 articulated that time, he used the John
17 Gotti reference, if he came and had a
18 conversation, that's not privileged
19 but --

20 MR. TOSCA: You didn't ask him
21 that question, you asked him substance.
22 If you ask if he had a conversation,
23 with me, that's fine.

24 Q. Did you have a conversation with
25 your attorney?

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1 R. SCORDINO

2 A. Yes.

3 Q. Did you talk about your testimony
4 without mentioning the testimony?

5 MR. TOSCA: Objection.

6 Don't answer the question.

7 MR. MORRIS: Counsel, I'm
8 cautioning you, I'm going to seek a
9 ruling and we're going to seek the
10 appropriate remedy against you.

11 MR. TOSCA: Okay.

12 RL MR. MORRIS: Mark that for a
13 ruling, please.

14 Q. Code Enforcement at the Village
15 of Babylon, do they have a Civil Service
16 certification?

17 A. I don't think so.

18 Q. Are there ranks within the Code
19 Enforcement Department within the Village of
20 Babylon?

21 A. Yes.

22 Q. With are those ranks?

23 A. I believe sergeant and next --
24 what would be below it, I'm not sure. It's
25 all, nothing is certified, I didn't go through

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 the Village board.

3 Q. Are there promotional
4 examinations for the different ranks?

5 A. No.

6 Q. Can Code Enforcement legally
7 issue summonses or violations?

8 A. Yes.

9 Q. What is the authority to do so?

10 MR. TOSCA: Objection.

11 You can answer.

12 A. Code book.

13 Q. When you say code book, to what
14 are you referring?

15 A. Village Code Book.

16 Q. Where is that maintained?

17 A. Village Hall.

18 Q. When you say --

19 A. I believe they have a copy of it
20 also.

21 Q. Do you have a copy of it?

22 A. Yes.

23 Q. How long have you maintained such
24 a copy?

25 A. Since I was mayor and trustee,

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1 R. SCORDINO

2 everybody has it.

3 Q. Does it change at all?

4 A. Yes. It gets updated.

5 Q. When it gets updated, how do you
6 receive the updates?

7 A. New York State.

8 Q. When you say New York State, what
9 occurs?

10 A. We get an amendment to our code
11 book.

12 Q. How to you get the amendment?

13 A. Pardon me.

14 Q. How do you get the amendment?

15 A. It's mailed to us. After a law
16 is passed, it comes down to us after a 30-day
17 waiting period.

18 Q. The individual laws are updated,
19 not the book itself, necessarily?

20 A. It go into the book itself as an
21 amendment to it.

22 Q. Where is the book maintained now?

23 A. My office, Suzanne's office. I
24 believe the court has a book. Highway
25 Superintendent has a book. Village clerk has

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 a book.

3 RQ MR. MORRIS: I call for the
4 preservation and production of such book
5 as is maintained in the regular
6 course of business in the Village of
7 Babylon.

8 Q. Have you ever taken out or
9 destroyed anything from that book?

10 A. No.

11 Q. Where is it physically located?

12 A. Suzanne has one in her office.
13 Village clerk has one downstairs. I believe
14 the court has one in her office. I imagine
15 the Building Department has one.

16 Q. Are code enforcement officers
17 legal peace officers?

18 A. I don't know what the definition
19 is of peace officer.

20 Q. Do the Village of Babylon peace
21 officers carry a weapon?

22 A. No.

23 Q. Can they make arrests?

24 A. No.

25 Q. Can they enforce the penal law?

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1 R. SCORDINO

2 A. No.

3 Q. Can they enforce the building
4 code of another jurisdiction?

5 A. No.

6 MR. TOSCA: Objection.

7 Q. To whom do the code enforcement
8 officers ultimately answer?

9 A. Bill Whittier.

10 Q. To whom does Bill Whittier
11 answer?

12 A. Me.

13 Q. Does Village of Babylon have code
14 enforcement vehicles?

15 A. Yes.

16 Q. Do those vehicles have red lights
17 or flashing lights?

18 A. No. I believe they're yellow.

19 Q. When you say yellow lights, are
20 those strobe, something else?

21 A. Strobed, I guess. They have a
22 light bar on top.

23 Q. When you say light bar, does it
24 flash in any sort of manner?

25 A. Yeah.

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1 R. SCORDINO

2 Q. Flashes. So not a strobe, but it
3 flashes sort of like a circular --

4 A. No. It strobes, I guess the
5 light bar has a strobe, it has white lights
6 and I believe it has yellow.

7 Q. Is there any certifications
8 required to issue a summons from the code book
9 of which you mentioned earlier at the Village
10 of Babylon?

11 MR. TOSCA: Objection.

12 You can answer.

13 A. Certification, no.

14 Q. Any sort of course or
15 requirement --

16 A. No.

17 Q. -- one must pass?

18 A. No.

19 Q. In other words, aside from their
20 employ, there is nothing else that needs to
21 occur for them to issue summonses within the
22 Village of Babylon?

23 MR. TOSCA: Objection.

24 A. They have to have knowledge of
25 the code book and they write it right from the

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1 R. SCORDINO

2 code book, any violations.

3 Usually in a situation like that,
4 they would consult Bill Whittier before they
5 would write the summons. They would be
6 directed by Bill Whittier to write the
7 summons.

8 Q. Code enforcement vehicles, you
9 said a yellow strobe.

10 Is there anything red on car?

11 A. I'm not sure if it's red or not.

12 Q. When you say you're not sure, has
13 it changed over time?

14 A. No, because if -- there was a
15 ruling a while back about red lights, certain
16 people can use red lights; but I'm not a
17 hundred percent sure because they're also used
18 in our first responders, if you're closing a
19 road down, you have to have red strobe in
20 there, so I think some of them do and some of
21 them don't. I'm not a hundred percent sure.

22 Q. Are the Civil Service persons
23 promoted by examination?

24 A. They're taken off a list, but I
25 don't think the code -- the code people aren't

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 taken off a list.

3 Q. So the code enforcement is not
4 Civil Service?

5 A. No.

6 Q. What, if anything, are the code
7 enforcement officers, are they appointed, are
8 they hired?

9 A. Apply and they're hired.

10 Q. By who?

11 A. Recommendation of Bill Whittier
12 and it goes to my office and I hire them.

13 Q. So ultimately you are responsible
14 for the hiring?

15 A. Yes.

16 Q. Can Bill Whittier fire the code
17 enforcement officer?

18 A. He can come and recommend that a
19 firing happen, but we have some discussion
20 there of why.

21 Q. Ultimately who is responsible for
22 the firing --

23 A. Myself and the Board of Trustees.

24 Q. Who would do it?

25 A. Have to be a resolution made for

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1 R. SCORDINO

2 hiring and fire.

3 Q. Who would make such resolution?

4 A. It would be myself or --

5 Q. As the mayor of the Village of
6 Babylon?

7 A. Right.

8 Q. Are you acquainted with an
9 individual by the name Deborah Shea?

10 A. Yes.

11 Q. When did you first become
12 acquainted with Ms. Shea?

13 A. When I hired her, back I don't
14 know how many years ago.

15 Q. What was Mr. Shea's association
16 with the Village of Babylon?

17 A. She worked in the Village clerk's
18 office.

19 Q. What was her job title?

20 A. I believe she's Deputy Village
21 clerk.

22 Q. Is that a Civil Service position
23 protected under the Civil Service law of the
24 State of New York?

25 MR. TOSCA: Objection?

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1 R. SCORDINO

2 A. I believe she was taken off the
3 Civil Service list.

4 Q. To whom did she report and who
5 was her direct supervisor?

6 A. Village clerk.

7 Q. Village clerk?

8 A. Yes.

9 Q. Who is her direct supervisor?

10 A. Pat Carley.

11 Q. I'm sorry, Pat?

12 A. Carley, C-A-R-L-E-Y.

13 Q. What was Pat Carley's title?

14 A. Village clerk.

15 Q. Just to be clear, what was
16 Ms. Shea's job title?

17 A. Deputy, I believe, Village clerk.

18 Q. How long did Ms. Shea work within
19 the Village of Babylon?

20 A. I believe it was around eight
21 years.

22 Q. Is Ms. Shea is still employed by
23 the Village of Babylon?

24 A. No.

25 Q. Do you know when Ms. Shea was

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1 R. SCORDINO

2 hired by the Village of Babylon?

3 A. I don't know the exact date.

4 Q. What were the circumstances
5 surrounding the end of Ms. Shea's employment
6 with the Incorporated Village of Babylon?

7 A. She was let go.

8 Q. What were the circumstances
9 surrounding her being let go?

10 A. She stole money from the Village.

11 Q. Did you report that to the police
12 departments?

13 A. No. Our Village attorney,
14 discussion, she gave back the money and for
15 retribution she paid back and she was just let
16 go.

17 Q. When you say Village attorney,
18 was that Mr. Glass or somebody else?

19 A. Joel Sikowitz.

20 Q. Did you participate in any way in
21 the process which led to the hiring and firing
22 of Ms. Shea?

23 A. I'm sorry?

24 (Whereupon, the requested portion
25 was read back by the reporter.)

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1 R. SCORDINO

2 A. Yes.

3 Q. Can you tell me how you
4 participated in the hiring of Ms. Shea?

5 A. Through an interview. She came
6 in, seemed to be qualified for the job. I
7 hired her. Put her downstairs. She was just
8 a regular secretary, worked herself up to
9 deputy clerk, and then we had to fire her.
10 Put a resolution through with the rest of the
11 board.

12 Q. When you say we had to fire her,
13 what was the participation in which you fired
14 her?

15 A. Through a resolution through
16 Village at a Village Board meeting.

17 Q. You participated in that
18 resolution; is that right?

19 A. Yes.

20 Q. Were there any meetings that led
21 up to such resolution?

22 A. Um-hum.

23 Q. What were those meetings?

24 A. With our Village clerk and
25 Village attorney.

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1 R. SCORDINO

2 Q. During the time that Ms. Shea was
3 employed by the Incorporated Village of
4 Babylon, did you have occasion to interact
5 with her during the course of your activities
6 as an employee of the Village?

7 A. No.

8 Q. Did you interact with Ms. Shea
9 during working hours at the Village?

10 A. Absolutely.

11 Q. How often did you interact with
12 Ms. Shea during working hours at the Village?

13 A. Twice a day going down to the
14 Village clerk's office, maybe no times. It
15 was in a week, maybe ten times.

16 Q. Did you ever communicate with
17 Ms. Shea by electronic mail?

18 A. No.

19 Q. You never received an electronic
20 mail from Ms. Shea?

21 A. No.

22 Q. You never sent an electronic mail
23 to Ms. Shea?

24 A. No.

25 Q. Did you ever communicate with

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1 R. SCORDINO

2 Ms. Shea by telephone?

3 A. I can't remember, I don't
4 remember.

5 Q. Do you have any written
6 communication with Ms. Shea?

7 A. No.

8 Q. Do you ever meet with Ms. Shea
9 outside regular Village business hours during
10 the time she was employed by the Village of
11 Babylon?

12 MR. TOSCA: Objection.

13 You can answer.

14 A. Yes. She lives, used to live on
15 our block, so I used to see her.

16 Q. When you say on our block, is
17 that Washington?

18 A. Yes.

19 Q. That is in Village of Babylon?

20 A. Yes.

21 Q. Where did those meetings to which
22 you just testified occur?

23 MR. TOSCA: Objection.

24 You can answer.

25 A. What do you mean meetings? I

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

274

1 R. SCORDINO

2 didn't say meetings. I said we used to see
3 each other and say hello like every neighbor.

4 Q. Where did those --

5 A. On Washington Street.

6 Q. Who, other than you and Ms. Shea,
7 were present at those meetings?

8 MR. TOSCA: Objection.

9 A. Nobody.

10 Q. What was purpose of those
11 meetings?

12 MR. TOSCA: Objection.

13 You can answer.

14 A. Just to say hello, you know,
15 passing by.

16 Q. At the period of time you were
17 meet with Ms. Shea away from the office and
18 outside business hours, were you married?

19 MR. TOSCA: Objection.

20 A. Yes.

21 Q. To whom were you married?

22 A. Linda Scordino.

23 Q. For how long have you been
24 married to Linda Scordino?

25 MR. TOSCA: Objection.

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Asked answered.

3 You can answer again.

4 A. Thirty years.

5 Q. When did you and Linda Scordino
6 marry?

7 MR. TOSCA: Objection.

8 You can answer.

9 A. Eighty -- '76. I guess '76.

10 Q. Where were you and Linda Scordino
11 married?

12 A. St. Joseph's Church.

13 Q. Are you still married to Linda
14 Scordino?

15 A. Yes, I am.

16 Q. In the time you were married, was
17 your wife employed?

18 A. Yes.

19 Q. Where?

20 A. West Islip School District.

21 Q. Was she actively working at that
22 time?

23 A. Yes.

24 Q. Is she still working at the West
25 Islip School District?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. No. She retired.

3 Q. Does she collect a pension from
4 the West Islip School District?

5 MR. TOSCA: Objection.

6 You can answer.

7 A. New York State.

8 Q. At the time your wife was
9 employed, did you ever have any social
10 interaction with any of her coworkers?

11 A. Yes.

12 Q. Which of those coworker's names
13 can you recall?

14 A. I can't recall.

15 Q. Was Judge Rafter's wife one of
16 those coworkers?

17 A. I don't believe so.

18 Q. Were any of those coworkers or
19 their spouses or significant others with whom
20 they might have been keeping company at that
21 time associated with the Village of Babylon?

22 A. I don't recall.

23 Q. Anything that would refresh your
24 recollection?

25 A. No.

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Q. Do you know whether or not your
3 wife had any social interaction the wife of
4 the Village Justice of Babylon?

5 A. No.

6 Q. Have you ever had any social
7 interaction with Village Justice of Babylon?

8 MR. TOSCA: Objection.

9 You can answer.

10 A. Babylon Village is very, very
11 small, you know passing in the business
12 district, I might see her, she might be
13 shopping in the village, I might see her.
14 That's about it.

15 Q. So you have had interactions?

16 A. Right.

17 Q. During the time you were meeting
18 with Ms. Shea and outside of business hours,
19 was you wife ill?

20 MR. TOSCA: Objection.

21 Do not answer the question.

22 MR. MORRIS: On what grounds?

23 MR. TOSCA: You're asking him to
24 give you information about his wife's
25 health. That's not material here. His

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1 R. SCORDINO

2 wife's health is privileged, so any
3 medical information, I'm going to object
4 to with regard to Mayor Scordino's wife.

5 RL MR. MORRIS: Mark that for a
6 ruling.

7 Q. During the period of time you
8 were meeting with Ms. Shea outside of business
9 hours, was you wife aware of those meetings?

10 A. I didn't hear the question.

11 MR. TOSCA: That's all right.

12 I object.

13 He is not answering.

14 MR. MORRIS: Can you repeat that
15 question.

16 (Whereupon, the requested portion
17 was read back by the reporter.)

18 MR. TOSCA: First of all, he
19 already said it wasn't a meeting.

20 You can answer over objection.

21 A. No.

22 Q. Any reason why she was not?

23 A. Not ill?

24 MR. TOSCA: He asked if she was
25 aware.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Q. She was not aware of those
3 meetings?

4 A. To say hello to somebody, I don't
5 think it would be necessary that I have to
6 tell her I said hello with one of the
7 neighbors.

8 Q. Did you ever tell your wife you
9 were meeting with Ms. Shea away from the
10 office and outside of business hours?

11 MR. TOSCA: Again, you're calling
12 it a meeting. He didn't say it was a
13 meeting.

14 MR. MORRIS: Counsel, if you're
15 going to testify, take an oath; if not,
16 please be quiet.

17 MR. TOSCA: No, don't tell me to
18 be quiet.

19 MR. MORRIS: Yes, you're
20 interrupting --

21 MR. TOSCA: He already said it
22 wasn't the case, so objection.

23 Q. Ms. Shea ever call your wife?

24 A. Call my wife, yeah. She used to
25 clean our house.

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Q. Did you ever tell your wife you
3 were meeting with Ms. Shea away from the
4 office and outside of business hours?

5 MR. TOSCA: Objection to the form
6 of the question.

7 You can answer over objection.

8 A. No.

9 Q. Did you ever travel together with
10 Ms. Shea away from the office and outside of
11 business hour?

12 MR. TOSCA: Over objection you
13 can answer.

14 A. Yes.

15 Q. Who, if anyone, accompanied you
16 besides Ms. Shea?

17 A. No one.

18 Q. Where did you go?

19 A. To her house to drop her off, it
20 was snowing out, so I dropped her off.

21 Q. Did you and Ms. Shea ever attend
22 the Association of Towns meeting in New York
23 City at the same time?

24 A. No.

25 Q. Did you stay in the city

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 overnight during such meeting?

3 A. Absolutely not.

4 Q. Do you know whether Ms. Shea ever
5 stayed in the city overnight during any such
6 meeting?

7 MR. TOSCA: Objection.

8 A. I have no idea.

9 Q. Who supplied the polling machine
10 in the 2019 election in the Village of
11 Babylon?

12 MR. TOSCA: Objection.

13 A. It's done by the Village clerk, I
14 guess the Board of Elections.

15 Q. Do you not know?

16 A. No. It's usually done by the
17 Village clerk.

18 Q. Who was that for 2019?

19 A. It was Jean Parker.

20 Q. For whom does Jean Parker work?

21 A. She's the Village clerk.

22 Q. To whom does she answer?

23 A. To me.

24 Q. As you sit here today, you don't
25 know who supplied the polling machines?

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1 R. SCORDINO

2 A. I believe it was the Board of
3 Elections, Suffolk County Board of Elections.

4 Q. What, if any, did you have to do
5 with the supplying of those polling machines
6 for the 2019 election in the Village?

7 MR. TOSCA: Objection.

8 You can answer.

9 A. Sign the contract. I guess to
10 pay them. That the only interaction I have.
11 It's done by resolution, too.

12 Q. There was the contract
13 resolution?

14 A. Yes.

15 Q. Anything else memorializing your
16 involvement in the polling machines for the
17 2019 election for the Village of Babylon?

18 MR. TOSCA: Objection.

19 A. No.

20 Q. Did you ever serve as poll
21 counter for the Republican Committee in the
22 15th District?

23 A. Yes. Poll watcher, not counter,
24 poll watcher.

25 Q. Is the Village clerk of the

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1 R. SCORDINO

2 Incorporated Village of Babylon elected or
3 appointed?

4 A. Appointed, I believe. She is
5 appointed.

6 Q. She was the one who was
7 responsible for the interactions that supplied
8 the polling machines for the 2019 election of
9 the Village of Babylon?

10 A. Yes.

11 Q. Where do these machines typically
12 come from?

13 A. I don't know where they're
14 stored.

15 Q. Do you know from where they came?

16 A. I don't know where they're
17 stored. I don't know where they came from.
18 They usually come from the Board of Elections.
19 I don't where they store them.

20 Q. Do you know how they came to the
21 Village of Babylon?

22 A. Board of Elections delivers them.

23 Q. Who was responsible for
24 conducting and managing the Village election
25 in March 2019?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. Village clerk.

3 Q. Do you know who is responsible
4 for programming or placing the codes in the
5 polling machines?

6 A. Board of elections.

7 Q. Do you know who monitored the
8 work of the individual managing the Village of
9 Babylon election in March 2019?

10 A. I don't understand your question.

11 MR. MORRIS: Withdraw the
12 question.

13 Q. What role, if any, do you play in
14 the Village election in which you are not
15 running for an elected official?

16 A. I'm part of the campaign
17 committee.

18 Q. Was the public high school in the
19 Village of Babylon a polling place in
20 March 2019 for Village of Babylon election?

21 A. Yes.

22 Q. Did you or your wife or both
23 of you visit the high school building on
24 election day in March 2019 in the early
25 morning hours of the next day?

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1 R. SCORDINO

2 MR. MORRIS: Let the record
3 reflect that everyone seems to be
4 staring at the defendant as he answers.

5 MR. TOSCA: Aside from the
6 deponent, I haven't seen anyone else
7 staring.

8 MR. MORRIS: -- three people
9 staring.

10 A. I can't remember.

11 Q. You can't recall?

12 A. No.

13 MR. TOSCA: The only person
14 staring at the witness is your client.

15 THE WITNESS: Very threatening,
16 too.

17 Q. You and your wife, were you
18 behind the high school at 5:00 a.m. on
19 March 20, 2019; yes or no?

20 A. March when?

21 Q. March 20, 2019.

22 A. No, I can't remember what is
23 there.

24 Q. Is it no or I can't remember.

25 A. No, I can't remember.

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1 R. SCORDINO

2 Q. Have you had occasion to apply
3 for permits from any agency of the Village
4 government for the Village of Babylon?

5 A. I don't know what you mean. I
6 don't understand the question.

7 Q. You know what permits are, right?

8 A. Right.

9 Q. You know what the Village of
10 Babylon is?

11 A. Right.

12 Q. Did you ever apply for a permit
13 in the Village of Babylon?

14 A. Car permit?

15 Q. Yes.

16 A. My wife probably has, she's got a
17 permit on the car.

18 Q. When did you purchase your home
19 on Washington Avenue?

20 MR. TOSCA: Objection.

21 Asked and answered.

22 You can answer.

23 A. I believe it was '76, 1976.

24 Q. At the time you purchased your
25 home on Washington Avenue, did there exist a

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 deck and outdoor shower?

3 A. Yes. No. I had to apply for the
4 permit for the porch and the shower.

5 Q. I just asked you if you applied
6 for a permit?

7 A. See. You're not being very
8 specific, Mr. Morris. You know what I mean?

9 Did I apply for a building
10 permit, yes. I am aboveboard applying for a
11 permit. I bought a permit for my window, for
12 my porch in the front, my bay window, my two
13 storage sheds in the back, the deck in the
14 back, and the shower. I do get building
15 permits.

16 Q. You said you bought the building
17 permits; is that right?

18 A. I didn't buy the building
19 permits. I got the building permits.

20 Q. I'll try to ask this question
21 very specifically.

22 A. Okay.

23 Q. What were you and your wife doing
24 behind the Babylon High School at 5:00 a.m. on
25 March 20, 2019?

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1 R. SCORDINO

2 MR. MORRIS: Let the record
3 reflect, counsel has placed his hand
4 squarely in front of the witness.

5 MR. TOSCA: Yes.

6 Are you done with the question?

7 MR. MORRIS: Are you done
8 interfering?

9 MR. TOSCA: Are you done with the
10 question?

11 MR. MORRIS: Counsel, he's
12 testifying, you're interfering.

13 MR. TOSCA: I'm waiting for your
14 question to be done.

15 MR. MORRIS: It's been done,
16 that's how this works.

17 MR. TOSCA: The question is done?

18 MR. MORRIS: Yes.

19 MR. TOSCA: Then objection.
20 Don't answer the question.

21 MR. MORRIS: On what grounds?

22 MR. TOSCA: He's answered and now
23 you're asking him the question in an
24 improper form.

25 MR. MORRIS: You're telling him

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1 R. SCORDINO

2 not to answer on what grounds?

3 MR. TOSCA: He's already answered
4 the question, you're asking in improper
5 form.

6 RL MR. MORRIS: We'll mark that for a
7 ruling and we'll seek the appropriate
8 remedy at an appropriate time.

9 Counsel, privilege is a reason
10 not to answer. You're saying asked and
11 answered is now your reason?

12 MR. TOSCA: Palpably improper
13 question. It was already told, he gave
14 you testimony --

15 MR. MORRIS: Trying to make it
16 specific, Counsel.

17 MR. TOSCA: That's not making it
18 specific. That's putting words in his
19 mouth.

20 Q. Have you and your wife ever been
21 to Babylon High School?

22 MR. TOSCA: Objection.

23 You can answer.

24 A. Yes.

25 Q. Have you ever been there at 5:00

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 in the morning?

3 A. No.

4 Q. So your testimony here under oath
5 is you have never been to Babylon High School
6 at 5:00 a.m. in March 2019?

7 A. Probably, yes, I was. The year,
8 1999.

9 Q. 1999 was twenty years ago.

10 A. In 2019 during the election, I
11 was there. I was there for the -- because
12 this is the first time that we had the
13 election the Babylon High School and I wanted
14 to make sure everything was up and up. That
15 was part of my job to go around and do that.

16 Q. When you say up and up, to what
17 are you referring?

18 A. That they had no problem with the
19 machines?

20 Q. How do you do that?

21 A. Asking the chairman of the
22 polling place, is everything okay.

23 Q. Who --

24 A. As a matter of fact, that morning
25 I went to all the polling places.

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1 R. SCORDINO

2 Q. Who did you ask?

3 A. The chairman of the group that
4 was there. I don't know exactly who that was,
5 but I did have a polling certificate for that
6 that I could do that.

7 Q. To whom did you speak?

8 A. I don't know. I can't remember.

9 Q. You don't know anyone to whom you
10 spoke that day?

11 A. No.

12 Q. Did you inform the persons to
13 whom you spoke that you were on the ballot?

14 A. Yeah. They knew I was on the
15 ballot, everybody knows me.

16 Q. What, if anything, was their
17 response?

18 A. Pardon me?

19 Q. When you informed them, what, if
20 anything, was their response?

21 MR. TOSCA: Objection.

22 You can answer.

23 A. I can't recall exactly what they
24 said.

25 Q. To your knowledge.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. To the best of my knowledge.

3 Q. Is there anything that would
4 refresh your recollection?

5 A. No.

6 Q. Seems like an important day. Is
7 there anything that would prohibit you from
8 being able to recall that --

9 MR. TOSCA: Objection.

10 Q. -- conversation?

11 A. No.

12 MR. MORRIS: Let me finish the
13 question, please.

14 MR. TOSCA: Objection.

15 Q. The chair is responsible for each
16 polling location; is that right?

17 A. I think there's one chairman for
18 the whole Babylon School polling place.

19 Q. You don't recall who that was?

20 A. No.

21 Q. Was it a man or woman?

22 A. I can't recall.

23 Q. But you spoke to that person,
24 correct?

25 A. Yeah. I asked is everything

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 okay, are all the machines working?

3 Q. Where did that conversation
4 occur?

5 A. Right in the gymnasium.

6 Q. You entered the polling place?

7 A. Right.

8 Q. You approached the chairman?

9 A. Right.

10 Q. Was anyone else there?

11 A. Everybody was ready to work, I
12 guess. They were all ready to go.

13 Q. Was your wife present?

14 A. I don't believe my wife was
15 there.

16 Q. Did you speak to anyone else
17 after you spoke or before you spoke to the
18 chairman?

19 A. No.

20 Q. Is it the chairman's
21 responsibility to put in these codes and
22 access these machine?

23 A. I believe she is.

24 Q. Before and after the election,
25 correct?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. I didn't go after the election.

3 Q. I'm asking the responsibility of
4 the chairman, they're responsible for the --

5 A. Yes, all the way up to the
6 closing of the polling place.

7 Q. Is the deck and outdoor shower on
8 the Washington Avenue home on a Certificate of
9 Occupancy or deed of any sort?

10 A. Yes.

11 Q. Where is that?

12 A. Village Hall.

13 Q. Is it a deed, Certificate of
14 Occupancy, or something else?

15 A. CO.

16 Q. Did you apply for a Certificate
17 of Occupancy or building permit or any permit?

18 A. Building permit.

19 Q. When did you apply for that
20 building permit?

21 A. When it was built.

22 Q. What year was that?

23 A. I believe it was in the early
24 '80s, or after I moved in, probably couple
25 years after that.

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 Q. Did you do the work on the
3 Washington Avenue property?

4 A. No, a contractor did it.

5 Q. Did you apply for the permits on
6 the Washington Avenue property?

7 A. Yes.

8 Q. Who submitted the permit
9 application?

10 A. I believe I did.

11 Q. Did anybody assist you in
12 submitting such permit application?

13 A. No.

14 Q. With whom did you speak from the
15 Village of Babylon for such permit?

16 A. I can't recall.

17 Q. Did you go down to the Village of
18 Babylon Hall for that permit?

19 A. Yes.

20 Q. Did you speak to a man or woman?

21 A. I believe it was a woman.

22 Q. Did you submit anything in
23 writing to that woman?

24 A. No. It was just a regular permit
25 to do a building permit.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

296

1 R. SCORDINO

2 Q. Why didn't you submit anything in
3 writing for a regular building permit?

4 MR. TOSCA: Objection.

5 You can answer.

6 A. You usually go there and fill out
7 the application and submit it.

8 Q. Is there anything else to that
9 process?

10 A. I guess you get a certificate
11 back if everything's okay and you get a
12 building permit.

13 Q. I don't want you to guess.

14 As the mayor of the Village of
15 Babylon; is that the process?

16 A. Yes.

17 Q. Is there a quality of life
18 initiative within the Village of Babylon?

19 MR. TOSCA: Objection to the
20 form.

21 You can answer.

22 MR. MORRIS: Let me withdraw
23 that.

24 Counsel, what's wrong with the
25 form of that question?

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 MR. TOSCA: I'm sorry?

3 MR. MORRIS: What's wrong with
4 the form of that question?

5 MR. TOSCA: What's --

6 MR. MORRIS: Is there a quality
7 of life initiative within the Village of
8 Babylon?

9 MR. TOSCA: At what point, what
10 year, when?

11 Q. Did you ever hear anyone say
12 quality of life initiative in your life?

13 A. Yes.

14 Q. When was the year in which this
15 occurred?

16 A. We always have a quality of life
17 initiative. We don't need somebody to tell
18 us. That's part of our whole scheme of things
19 in the Village, and we take much pride in
20 doing that.

21 Q. Is there a formal initiative or
22 has this always occurred?

23 A. Always occurred.

24 Q. So there's no formal initiative?

25 A. Right.

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 Q. Is there any agreement between,
3 for instance, the Village of Babylon and MTA,
4 Metropolitan Transit Association?

5 A. We work hand-in-hand with them to
6 try to make sure the quality of life at the
7 train station are upheld.

8 Q. Is there anything associated with
9 the words "quality of life initiative" as it
10 exists between the Village of Babylon and the
11 Metropolitan Transit Association?

12 A. Yeah. We together to make sure
13 the quality of life at the train station is
14 promoted and continuing to be a good place to
15 be, safe place to be.

16 Q. Safe?

17 A. Safe.

18 Q. Is there a record or writing that
19 bears quality of life initiative between or
20 among the Metropolitan Transit Association and
21 the Village of Babylon?

22 A. I don't remember one.

23 Q. You say you don't remember --

24 A. I don't recall.

25 Q. Is there anything that would

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 refresh your recollection?

3 A. No.

4 Q. Is there any documents to which
5 you could refer?

6 A. No.

7 Q. All right.

8 So is the part of your mandate as
9 mayor of the Village of Babylon quality of
10 life?

11 A. Yes.

12 Q. Is safety part of your mandate as
13 the mayor of the Village of Babylon?

14 A. Very, very much.

15 MR. TOSCA: Objection.

16 Q. Is this something that you run
17 upon as the mayor of the Village of Babylon?

18 A. Yes.

19 Q. Do you use it in your campaign
20 literature?

21 A. Yes.

22 Q. Is it something of which you are
23 proud?

24 A. Yes.

25 Q. Do you speak about it in regards

John Lepper v. Village of Babylon
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1 R. SCORDINO

2 to the Village of Babylon?

3 A. All the time.

4 Q. Have you ever sent out a holiday
5 letter about a tree house?

6 A. No.

7 Q. Have you ever sent out an
8 initiative about a tree house that was picked
9 up in the news media?

10 A. No.

11 Q. Have you ever sent anything to
12 your constituents about a tree house?

13 A. No.

14 Q. To voters about a tree house?

15 A. No.

16 Q. Do you know if there are drugs
17 stored within John Lepper's neighbor's house
18 and/or tree house?

19 MR. TOSCA: Objection.

20 You can answer over objection.

21 A. I don't know.

22 Q. Do you know if there was a house
23 neighboring John Lepper's house that was
24 raided for drugs?

25 MR. TOSCA: Objection.

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1 R. SCORDINO

2 You can answer.

3 A. It was around his corner, not
4 next to him. It was on the next street,
5 Wyandanch Avenue.

6 Q. Where was it?

7 A. One of the houses on Wyandanch.

8 Q. How far from Mr. Lepper's house
9 was that house?

10 A. Block, block away.

11 Q. This house that was a block away,
12 what is your knowledge about the raid and the
13 drugs?

14 A. It's been an ongoing thing with
15 this resident and son. He's a known drug
16 dealer.

17 Q. When you say known drug dealer,
18 known to whom?

19 A. With the residents, they all
20 know.

21 Q. Do you know?

22 A. Yeah.

23 Q. Do you know if there was a gun
24 recovered at that house?

25 A. Um-hum.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

302

1 R. SCORDINO

2 Q. When was that gun recovered?

3 A. Couple years ago.

4 Q. Do you know if there was drug
5 activity within the Village of Babylon?

6 MR. TOSCA: Objection.

7 You can answer.

8 A. Yes.

9 Q. The neighbor of Mr. Lepper's when
10 the gun was recovered from whom the house was
11 raided by drugs, is that house three houses
12 away from Mr. Lepper's?

13 MR. TOSCA: Objection.

14 A. No. I don't believe so.

15 Q. Do you know?

16 A. The house that I'm talking about
17 is on Wyandanch Avenue.

18 Q. Is there perhaps another house
19 that --

20 A. Maybe. I'm not sure. I usually
21 know that by Code Enforcement, they usually
22 inform me, or the neighbors inform me.

23 Mr. Lepper never called me about
24 it, so I imagine that -- I don't know.

25 Q. How do the neighbors inform you?

John Lepper v. Village of Babylon
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303

1 R. SCORDINO

2 A. They call me.

3 Q. They have your personal number?

4 A. At Village Hall.

5 Q. Okay.

6 Wyandanch, is there another house
7 that was raided for drugs?

8 A. Yes.

9 Q. What other house besides
10 Wyandanch?

11 A. That's the only one I know, it's
12 been ongoing for at least five years.

13 Q. Is there another house that's
14 three houses away from Mr. Lepper's?

15 MR. TOSCA: Objection.

16 A. I just told you, I don't know. I
17 wasn't notified about it. If there was a
18 concern, nobody called me.

19 Q. What about another house that was
20 raided for drugs and had a gun within the
21 Village of Babylon, do you know of any other
22 such house?

23 MR. TOSCA: Objection.

24 A. I believe that's the one on
25 Wyandanch Avenue.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

304

1 R. SCORDINO

2 Q. How many houses away from Tony
3 Davida's house is the house on Wyandanch
4 Avenue to which you refer?

5 MR. TOSCA: Objection.
6 You can answer.

7 A. I would guess around ten houses.

8 Q. Are you aware that was a school
9 bus stop in the neighborhood, the vicinity of
10 John Lepper's neighbor's tree house?

11 A. I do.

12 Q. Do you know --

13 A. On Wyandanch Avenue, the bus
14 stop, yes.

15 Q. Do you know that eventually that
16 bus stop had to be moved?

17 A. Yes.

18 Q. Do you know what kind of bus stop
19 is there?

20 A. School bus.

21 Q. Do you know what the age of
22 students picked up at that bus stop were?

23 A. I guess they were young students,
24 first, second grade. I don't know what the
25 requirements are for bus pick-up.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

305

1 R. SCORDINO

2 Q. Do you know it had to be moved?

3 MR. TOSCA: Objection.

4 Asked and answered.

5 You can answer.

6 A. I was told.

7 Q. Do you know prior to it being

8 moved, there was a number of raids on the

9 house where guns were found?

10 MR. TOSCA: Objection.

11 You can answer.

12 A. Yes.

13 Q. Do you know why the bus stop was

14 moved?

15 A. Because of this activity right
16 across the street from where the bus stop is.

17 Q. If there were guns and drugs
18 within the Village of Babylon, would that be
19 within the quality of life initiative we
20 discussed above?

21 MR. TOSCA: Objection.

22 You can answer.

23 A. You have to understand, okay, we
24 try as best as we can with our code
25 enforcement who have no arrest ability, we can

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

306

1 R. SCORDINO

2 only enforce the codes, okay. This is a
3 Suffolk County Police matter, okay. We refer
4 many -- we refer these addresses and follow up
5 on the addresses, and Suffolk County Police
6 raided it because of the complaints that the
7 residents called Suffolk County and met with
8 Suffolk County, okay.

9 The one on Mr. Lepper's street,
10 we were never ever told, even Mr. Lepper never
11 called, who visits Village Hall all the time,
12 who knows where my office is, knows where I
13 live, okay, never stopped and told me, so how
14 can we do anything if we don't know.

15 Every resident gets every
16 opportunity to either call me at my house,
17 call my office, e-mail me.

18 Q. As the mayor of the Village of
19 Babylon, are guns and drugs within the Village
20 of Babylon consistent within the quality of
21 life within the Village of Babylon?

22 MR. TOSCA: Objection.

23 You can answer.

24 A. As far as I know, this is the
25 only incident that this house was raided and

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

307

1 R. SCORDINO

2 found drugs and a gun.

3 Q. When you say the only incident,
4 in which year did it occur?

5 A. Pardon me?

6 Q. In which year did such incident
7 occur?

8 A. I believe it was a couple years
9 ago. I'm not sure.

10 Q. This is a known drug dealer?

11 A. Yes.

12 Q. This is something that the
13 Village of Babylon reported?

14 A. We reported it with Suffolk
15 County. I met residents that came to my
16 office to discuss it. School officials called
17 me up, okay, and told me about the bus change.
18 It was a concern with those residents on
19 Wyandanch Avenue.

20 Q. How did the Village of Babylon
21 report it to Suffolk County?

22 A. Called the inspector. I tell the
23 residents to really go to the, they have a
24 community meeting, I believe it's every first
25 day of the month and talk to Suffolk County

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 and tell them there is a problem there.

3 I also called an inspector. We
4 also called COPE. We have a very good rapport
5 with COPE. We have another situation in the
6 Village where the DA was called, and we took
7 care of it on another street. So, you know,
8 we take care of these things, but we have to
9 know first.

10 Q. You said you knew an inspector;
11 is that right?

12 A. Yes.

13 Q. Which inspector do you know?

14 A. Inspector Cain (phonetic).

15 Q. What is Mr. Cain's first name?

16 A. I'm not sure.

17 Q. Or Ms. Cain, I apologize; is it a
18 man or woman?

19 A. Woman, Inspector Cain.

20 Q. When you contact Ms. Cain, on
21 what number do you call her?

22 A. 893, I think it's 1302. I can't
23 remember. I have is written down in my
24 office.

25 Q. In other words, do you call her?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. Call him, it's Mr. Cain.

3 Q. Mr. Cain.

4 Do you call Mr. Cain at the
5 Suffolk County Police Department?

6 A. First precinct.

7 Q. No calling Mr. Cain's personal
8 phone, correct?

9 A. No.

10 Q. Any sort of report occurred on
11 the known drug dealing activity to which you
12 testified?

13 A. I imagine so. They must have a
14 report.

15 Q. This is part of the quality of
16 life in the Village of Babylon, right?

17 MR. TOSCA: Objection.

18 Q. Do you not know the status of
19 such report?

20 MR. TOSCA: Objection.

21 You can answer.

22 A. I believe it's in the hands of
23 the First Precinct. I have full faith in them
24 that they would follow through and take care
25 of this problem.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 Q. Do you know the status of the
3 report?

4 A. No.

5 Q. When is the last time that you
6 checked on the report?

7 A. I didn't hear anymore complaints
8 about the house and I usually do. I assume
9 it's taken care of.

10 Q. When was the last time that you
11 checked on the report?

12 A. About a month ago.

13 Q. What was the status?

14 A. Status is ongoing.

15 Q. Prior to that month ago, when was
16 the last time you checked on this report that
17 is recently reported as ongoing?

18 A. About a month before that. We
19 stay on top of these things.

20 Q. When you came to learn about the
21 drug activity, the paraphernalia on
22 Mr. Lepper's property, what, if anything, did
23 you do?

24 A. Told Code Enforcement to make
25 extra trips down that street. If you see

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 something that is concerning, make sure they
3 call Suffolk County, and that's basically what
4 we can do. They find different havens where
5 they want to try to do different things, we
6 try to keep them clean.

7 Q. When you sent Code Enforcement
8 out.

9 Is that something that you
10 regularly do?

11 A. Yes.

12 Different areas, I get complaints
13 from residents about certain cars parking
14 overnight or late at night, I do tell them to
15 start making some visits to these places.

16 Q. That's not a polite suggestion,
17 right?

18 MR. TOSCA: Objection.

19 Q. In other words, you're ordering
20 them to do something?

21 A. No. I'm ordering them to have
22 some concern about it, make sure that they're
23 doing it because there are concerns about it.

24 Q. You're telling them to go
25 there --

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SCORDINO, RALPH A. - December 5, 2019

312

1 R. SCORDINO

2 A. Right.

3 Q. -- and they follow up on your
4 order?

5 A. And I follow up on that.

6 Q. How did you follow up?

7 A. Ask them if they did that, ask
8 them if it's on the routine, ask them if it's
9 on the night routine for the guys that work at
10 night.

11 Q. How do you do that?

12 A. I talk to Bill Whittier, the
13 superintendent.

14 Q. Fair to say if you don't receive
15 information from Bill Whittier, you don't know
16 what's going on?

17 A. He updates me every morning
18 before 9:30, every night before he leaves.

19 Q. You know what's going on in the
20 prosecution in your Village, right?

21 MR. TOSCA: Objection.

22 A. Prosecution, no.

23 I know when I tell him to do
24 something, he's doing what I'm telling him to
25 do because I remind him.

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SCORDINO, RALPH A. - December 5, 2019

313

1 R. SCORDINO

2 Q. Same thing for Stephen Fellman?

3 A. Yes.

4 Q. What time does Bill Whittier go
5 home every day?

6 A. Varies. Usually he comes up
7 around 3:30 and comes up in the morning before
8 9:30.

9 Q. Fair to say, if drug activity
10 happens before Bill Whittier goes home, he
11 might not be able to report that to you?

12 A. We have nine people that are
13 aware of Suffolk County and radio and they're
14 aware of different things happening, they have
15 a night log that they keep.

16 Q. Do these well-aware folks ever
17 report to you that one of properties for which
18 there is drug activity has a tree house?

19 MR. TOSCA: Objection.

20 A. No. The first time I was
21 notified about this, we asked them to start
22 going down there and to look to see if anyone
23 was parking on Wampum, and they do a routine,
24 they go by it and check it, might do it once,
25 twice during the night.

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1 R. SCORDINO

2 MR. MORRIS: Let's give the court
3 reporter a break. It's 4:18.

4 (Whereupon, a recess was taken
5 from 4:18 p.m. to 4:30 p.m.)

6 MR. MORRIS: The time is now
7 4:30.

8 Q. Mr. Scordino, did you discuss
9 your testimony during the break?

10 MR. TOSCA: Objection.

11 Don't answer the question.

12 MR. MORRIS: I'm asking if a
13 discussion happened, not the substance
14 of the discussion.

15 MR. TOSCA: No. You asked him if
16 he discussed his testimony. If you ask
17 him if he had a discussion with his
18 attorney, you're welcome to that.

19 Q. Did you have a discussion with
20 your attorney?

21 A. Yes.

22 Q. Any testimony you would like to
23 change after that discussion?

24 MR. TOSCA: Objection.

25 You can answer over objection.

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SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. No.

3 Q. Do you know a man McSweeney?

4 A. First name?

5 Q. Terry McSweeney.

6 A. Yes.

7 Q. Who is Terry McSweeney?

8 A. He is a resident over on

9 Ketawomoke, K-E-T-A-W-O-M-O-K-E.

10 Q. Did you swear Mr. McSweeney in
11 after he was elected as Town of Babylon
12 councilman?

13 A. No.

14 Q. Do you know if Mr. McSweeney has
15 reported any drug activity to you?

16 A. No.

17 Q. What does Mr. McSweeney do?

18 A. I believe he is a fireman and I
19 also believe he's a Town councilman.

20 Q. Fireman for who?

21 A. City of New York.

22 Q. Mayor, as you sit here today, are
23 you aware of any other guns that were produced
24 as a result of a raid of a property within the
25 Village of Babylon?

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SCORDINO, RALPH A. - December 5, 2019

316

1 R. SCORDINO

2 MR. TOSCA: Objecting.

3 You can answer.

4 A. The only raid I know of is the
5 one on Wyandanch Avenue, that's the only one I
6 know about.

7 Q. The one within a block proximity
8 to Mr. Lepper?

9 A. Yes, it's around the corner,
10 like, I would say 200, 300 yards away from him
11 going down Wampum, couple houses down from
12 Wyandanch.

13 Q. What year did you first become
14 aware of the activity?

15 A. I guess it was about three years
16 ago.

17 Q. How did you become aware of such
18 activity.

19 A. Neighbors called me on it.

20 Q. Which neighbors?

21 A. I think the next door neighbor
22 called me, Tony Davida called me on it,
23 there's some issue. The school called me on
24 it, and we followed up with the First
25 Precinct, with Bill Whittier.

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SCORDINO, RALPH A. - December 5, 2019

317

1 R. SCORDINO

2 Q. Aside from Bill Whittier and Tony
3 Davida, what other persons did you speak with
4 in regards to that house?

5 A. Max Waters who lives right next
6 door.

7 Q. Who else?

8 A. That's the only ones that really
9 come to my mind.

10 Q. When you say Tony Davida, is that
11 the same as trustee Tony Davida?

12 A. Yes.

13 Q. What was your conversation with
14 Mr. Davida about this property?

15 A. There seemed to be some activity
16 and that, you know, we should be calling the
17 First Precinct. I said fine, I'll let the
18 First Precinct know, and I also let Code
19 Enforcement know.

20 Q. When you say you'd let First
21 Precinct know and you'd let Code Enforcement
22 know, to whom did you speak?

23 A. Bill Whittier and the inspector.
24 I always believe I talked to Jeff Boloskowitz
25 (phonetic) who is the, I don't know what the

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318

1 R. SCORDINO

2 ranks are, but he's in charge of COPE.

3 Boloskowitz, I'm sorry, I don't
4 know that.

5 Q. This was about three years ago?

6 A. Yes. It's been going on for a
7 long time.

8 Q. Did Tony Davida ever report any
9 overdose activity in the area?

10 A. No, but I'm not sure, but I know
11 he's aware because he is a fireman in the
12 Village, so he's aware of some overdoses in
13 the Village from the fire department and I
14 also get some updates from the chief.

15 Q. How do you get those updates?

16 A. He comes in and tells me.

17 Q. Do you know where Tony Davida
18 lives?

19 A. Yes.

20 Q. How far is Tony Davida home from
21 this home here, the one with the gun.

22 A. Ten houses to the west of him on
23 the same side of the street.

24 Q. Is Mr. Davida's house closer than
25 Mr. Lepper's house to this house at which a

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SCORDINO, RALPH A. - December 5, 2019

319

1 R. SCORDINO

2 gun was --

3 A. I think probably closer, both of
4 them are about the same.

5 Q. Okay. Equal distance?

6 A. Yes.

7 Q. Have you ever been in a tree
8 house in your life?

9 A. Me?

10 Q. Yes.

11 A. No.

12 Q. Have you ever seen a tree house?

13 A. Seen the tree house, yeah.

14 Q. What tree houses have you seen?

15 A. Some tree houses upstate, I've
16 seen some tree houses on TV, there's a show
17 about it. I've seen a variety of different
18 tree houses that are in the Village. I
19 know of one on Thompson. I know of
20 Mr. Lepper's, I've seen that. Basically,
21 they're the only two I really know in the
22 Village.

23 Q. As you sit here today, have you
24 ever seen any other tree house within the
25 Village of Babylon?

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1 R. SCORDINO

2 A. Those are the only two.

3 Q. As you now sit here today, are
4 you aware of any other Village of Babylon tree
5 houses aside from the Thompson tree house and
6 the Lepper tree house?

7 A. They're the only two.

8 Q. Have you ever looked at the
9 property to which this drug activity has been
10 reported to see if there is a tree house?

11 MR. TOSCA: Objection.

12 You can answer.

13 A. On Wyandanch. No, I didn't
14 realize that there was the tree house there.

15 Q. I'm asking you if you ever
16 looked.

17 A. Yeah, I looked. I look at the
18 front of the house, I see it. I've gone by a
19 couple times, but I didn't know there was a
20 tree house there.

21 Q. Have you looked into the
22 backyard?

23 A. Not personally going in the
24 backyard, no. I usually would not go in
25 somebody's property without being invited.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

321

1 R. SCORDINO

2 Q. Without going on the property,
3 have you ever looked into the Wyandanch
4 property to see if there was a tree house?

5 A. No, never caught my eye.

6 Q. If it had caught your eye, it
7 would been different?

8 A. Yeah.

9 Q. Would you have done something
10 about it?

11 A. Sure. If I thought there was
12 something that was not proper, I would notify
13 the Building Department to take a look at it.

14 Q. As the mayor of the Village of
15 Babylon, that's part of your job, right?

16 MR. TOSCA: Objection.

17 A. Yes.

18 Q. What about problems at the Long
19 Island Railroad within the Village of Babylon,
20 is that part of your job?

21 MR. TOSCA: Objection.

22 A. Yes.

23 Q. Are you aware of whether people
24 are being arrested for drug activity?

25 A. Yes.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

322

1 R. SCORDINO

2 Q. Are you aware of whether people
3 are being arrested for drinking at the train?

4 A. Yes.

5 Q. Are you aware people being
6 arrested for smoking on the Village of Babylon
7 Long Island Railroad Train Station?

8 A. Yes.

9 Q. Are you aware as you sit here
10 today how long people have spent in jail for
11 smoking a cigarette at the Village of Babylon
12 Train Station?

13 MR. TOSCA: Objection.

14 A. I'm not sure. I think that
15 arrest that I'm thinking about happened in
16 this train station. I don't know how many
17 days they put him in jail. I wouldn't know.
18 Our people didn't do the arrest. It was MTA
19 that did it.

20 Q. Can you explain to what you're
21 referring?

22 A. There was an incident where I
23 believe somebody was smoking right underneath
24 the no smoking sign, and I guess the MTA
25 Police came and gave him a summons.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

323

1 R. SCORDINO

2 Q. Is there anything between the
3 Village of Babylon and the MTA Police
4 referring to the quality of life initiative?

5 A. Um-hum.

6 Q. What is that?

7 A. To make sure that the quality of
8 life issues are taken care of underneath the
9 train station and around the train station.

10 Q. What are those quality of life
11 issues?

12 A. They shouldn't be urinating.
13 There shouldn't any active panhandling, any
14 selling drugs. There shouldn't be, you know,
15 interfering with people's routes after they
16 come off the train, making sure they're not
17 loitering, making sure they're not keeping up
18 shelters underneath the railroad station,
19 they're basically the ones that we try to make
20 sure are clear. More aggressive things,
21 Suffolk County takes care of.

22 Q. So the things that Village of
23 Babylon takes care of, does that include a
24 citation for smoking a cigarette on Long
25 Island Railroad Property?

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 A. I don't believe that they can
3 issue, it would have to be MTA because I think
4 it's an MTA sign, but I'm sure they would
5 probably be warned by us. If they got overly
6 active or aggressive, maybe Suffolk County
7 would be called. Thin line there that they do
8 these things with.

9 Q. Are you aware of the prosecutions
10 that occur within the Village of Babylon
11 Justice Court?

12 A. Yes.

13 Q. What is prosecuted by the Village
14 of Babylon in the Village of Babylon Justice
15 Court?

16 MR. TOSCA: Objection.

17 You can answer.

18 A. How many? How many prosecutions,
19 I wouldn't know.

20 Q. Do you know the types of
21 prosecutions?

22 A. I would imagine that if they're
23 in the Village court, there is something on
24 code they violated, whether it be parking,
25 meter parking, or illegal parking, two-way

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

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1 R. SCORDINO

2 parking, anything that our code can do. They
3 can't do any arresting, they can't arrest
4 anybody. They can't search anyone, that would
5 be Suffolk County Police, but all non-moving
6 violations our Code Enforcement can enforce
7 and also quality of life issues, such as, you
8 know, vagrancy, sleeping, drinking, urinating,
9 panhandling, active panhandling.

10 Q. What about smoking a cigarette on
11 railroad property?

12 A. I don't think they can do that.
13 I'm not sure.

14 Q. As you sit here today, you're not
15 sure whether --

16 A. I don't think they can.

17 Q. As you sit here today, you're not
18 aware whether the Village of Babylon can
19 prosecute smoking under the Long Island
20 Railroad Village of Babylon property?

21 A. I don't know.

22 Q. Who would know?

23 A. Bill Whittier.

24 Q. Anyone else?

25 A. No. Bill would know.

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1 R. SCORDINO

2 Q. Are you aware of whether people
3 who are arrested by the MTA Police and to be
4 produced in the Village of Babylon Court are
5 arrested for code violations or these quality
6 of life violations?

7 A. Yes.

8 Q. What is your knowledge of that?

9 A. Just that they go to our court.

10 Q. So if someone gets arrested by
11 the MTA Police for smoking a cigarette at the
12 Village of Babylon Train Station at what court
13 would they appear.

14 A. Not one hundred percent sure if
15 they go to the Village Court or they might go
16 out to -- Suffolk County might bring them
17 somewhere else. I'm not sure. Or MTA might
18 bring them somewhere else.

19 Q. Did you ever check?

20 A. No.

21 Q. Are there any overdoses at the
22 Village of Babylon Train Station?

23 A. Yes.

24 MR. TOSCA: Objection.

25 You can answer.

John Lepper v. Village of Babylon
SCORDINO, RALPH A. - December 5, 2019

327

1 R. SCORDINO

2 Q. How many?

3 A. I'm not sure. I'd be guessing.

4 Q. More or less than ten?

5 A. One once a month. It's kind of
6 calmed down a little bit now. I know there
7 was a period of time there was a little more.
8 It's overdose, you have to make a judgment
9 too, it could be drug overdose or alcohol
10 overdose.

11 Q. If we consider overdose in the
12 form of any substance, how many overdoses
13 are --

14 A. I would say once a month. It's
15 quiet recently.

16 Q. How many overdoses are occurring
17 at the Village of Babylon Village Hall?

18 MR. TOSCA: Objection.

19 You can answer.

20 A. Village Hall, none.

21 Q. Do you know how many individuals
22 have gone to jail for smoking a cigarette at
23 the Village of Babylon Long Island Railroad
24 Station?

25 MR. TOSCA: Objection.

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1 R. SCORDINO

2 A. No.

3 Q. Is there a school along the Long
4 Island Railroad Station Village of Babylon?

5 A. Yes.

6 Q. What is the name of that school?

7 A. Babylon High School.

8 Q. Is that part of the Village of
9 Babylon?

10 A. Yes.

11 Q. Do you know how many overdoses
12 occurred at that high school within the
13 Incorporated Village of Babylon?

14 MR. TOSCA: Objection.

15 You can answer.

16 A. I wouldn't be privy to that
17 information unless somebody calls me from the
18 school.

19 Q. The answer is that you do not
20 know; is that right?

21 A. That's correct.

22 Q. Has anyone ever reported an
23 overdose to you that occurred?

24 A. Only if it came from fire
25 department. Sometimes they're very leery

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1 R. SCORDINO

2 about giving us special types of things like
3 that because they have rules and regulations,
4 HIPAA laws and everything else.

5 Q. Are you familiar with a person
6 named Jimmy Mack (phonetic)?

7 A. Jimmy Mac. No.

8 Q. How many prosecutions has the
9 Village of Babylon had over smoking cigarettes
10 at the Long Island Railroad Property?

11 MR. TOSCA: Objection.

12 You can answer.

13 A. I have no idea.

14 Q. How many prosecutions has the
15 Village of Babylon had over a tree house?

16 MR. TOSCA: Objection.

17 You can answer.

18 A. One, I guess. Mr. Lepper.

19 Q. Is there still the threat of
20 criminal prosecution against Mr. Lepper and
21 his family over the tree house that exists on
22 his property?

23 MR. TOSCA: Objection to the form
24 of the question.

25 You can answer over objection.

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1 R. SCORDINO

2 A. He's in the court. I don't have
3 any control over the judge.

4 Q. Let me ask the question again.

5 Is there a threat of criminal
6 prosecution against Mr. Lepper and his family?

7 MR. TOSCA: Objection.

8 A. I don't know.

9 Q. You've only prosecuted one tree
10 house in the Village of Babylon, is that
11 right, to your knowledge?

12 A. This one, yes.

13 Q. In fact, you have seen many tree
14 houses, correct?

15 A. No, I didn't say that. I said I
16 saw two, Mr. Lepper's and the one on Thompson.

17 Q. In your life?

18 A. Oh, in my life I've seen many.

19 Q. Your life has encompassed quite
20 some time in the Village of Babylon, has it
21 not?

22 MR. TOSCA: Objection.

23 You can answer.

24 A. Yes, very much so.

25 Q. How many tool sheds have you

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1 R. SCORDINO

2 prosecuted?

3 A. Tool sheds. I have no idea.

4 Q. Have you ever heard of a

5 prosecution over a chicken coop?

6 MR. TOSCA: Objection.

7 You can answer over objection.

8 A. No.

9 Q. You have heard about the arrest
10 over smoking on Long Island Railroad property,
11 right?

12 A. Yes.

13 Q. To your knowledge, you don't know
14 whether people are put in jail for such a
15 thing, correct?

16 MR. TOSCA: Objection.

17 You can answer.

18 A. Yes.

19 Q. They are put in jail?

20 A. Yes.

21 Q. Do you know how long someone
22 spent in jail because they smoked a cigarette
23 at the Village of Babylon Long Island Railroad
24 Train Station?

25 MR. TOSCA: Objection.

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1 R. SCORDINO

2 A. No.

3 Q. Anyone report to about how much
4 resources are being spent on the
5 prosecution of people for smoking a cigarette
6 at Village of Babylon Train Station?

7 MR. TOSCA: Objection.

8 A. No.

9 Q. How many lawsuits have occurred,
10 if any, for the arrests that occurred at the
11 Village of Babylon Railroad Station?

12 A. In my tenure as a mayor, I think
13 this is the only one.

14 Q. Before you were mayor, is there
15 any others?

16 A. I don't believe so. I can't
17 remember. I wouldn't know. It's going back
18 too far. I wouldn't be privy as the trustee
19 too, that's basically, that would have been
20 the other mayor.

21 Q. Any document that would refresh
22 your recollection?

23 A. No.

24 Q. To be clear, you have served as
25 an elected official in the Village of Babylon

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1 R. SCORDINO

2 for how long now?

3 A. Fifteen and a half and seventeen.

4 Q. Fair to say that it's been about
5 32 years?

6 A. Right on, and a half.

7 Q. And a half.

8 In that 32 and a half years, have
9 you come to learn of anyone within the Village
10 of Babylon being prosecuted for a tool shed?

11 MR. TOSCA: Objection.

12 You can answer.

13 A. No.

14 Q. In that 32 and a half years as an
15 elected official within the Village of
16 Babylon, have you heard anyone being
17 prosecuted over a chicken coop?

18 MR. TOSCA: Objection.

19 You can answer.

20 A. Not to my recollection.

21 Q. In 32 and a half years as an
22 elected official in the Village of Babylon,
23 have you ever heard of anyone being threatened
24 with daily fines?

25 A. Yes.

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1 R. SCORDINO

2 Q. Who?

3 A. Couple of people, people that
4 haven't kept their houses in good shape,
5 people that constantly park boats illegally on
6 their property. We stay abreast of these
7 things, and if they don't listen the first
8 time, we give them another summons. Sometimes
9 the summons make them think a little bit, you
10 know, maybe they should follow the code book.
11 Everybody has a right to ignore it, but
12 they're gonna get reprimanded for it.

13 Q. Who are those persons who
14 received the threat of daily fines?

15 A. We have a couple of abandoned
16 houses that we looked at, finally had to go to
17 their attorney and say you got to clean up the
18 house. One was on Paumanake. There's another
19 down the end of Peninsula. There was another
20 one on the corner of Mulberry and Peninsula,
21 the upkeep of the property, storing boats on
22 the property, couldn't get them off the
23 property, people were complaining.

24 Q. The answer I'm looking for is
25 something that consist of a name, who?

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1 R. SCORDINO

2 A. The names of these people?

3 Q. Yes.

4 A. I don't know the names. I don't
5 get involved. I'm looking at the infraction
6 rather than the name, the property, the
7 location, the address.

8 Q. Did your niece ever have an
9 abandoned home after Hurricane Sandy?

10 A. Yes.

11 Q. Did she ever receive the threat
12 of daily fines?

13 A. She was getting fines also. She
14 was in our court. It was an embarrassment to
15 me. The whole family is not even talking to
16 me because of the fines on that because she
17 didn't listen. My cousin.

18 Q. Did she receive the threat of
19 daily fines?

20 A. She got a lot of fines. I don't
21 know if they were daily or not but she got a
22 lot of fines.

23 Q. Sir, you're sitting in a chair,
24 correct?

25 A. Sure.

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1 R. SCORDINO

2 Q. Came here by car?

3 A. Yes.

4 Q. Did your cousin receive the
5 threat of daily fines; yes or no?

6 A. I believe --

7 MR. TOSCA: Objection.

8 You can answer over.

9 A. I believe she did.

10 Q. By whom?

11 A. By the Building Department.

12 Q. What person?

13 A. Steven Fellman.

14 Q. What was the authority by which
15 he issued that threat?

16 MR. TOSCA: Objection.

17 A. Very important thing, which is
18 relevant to this case. Do you know what the
19 word was?

20 Q. What was the word?

21 A. Safety. The house was leaning
22 off to the side. Safety. Just like
23 Mr. Lepper's tree house, safety, safety,
24 safety. I didn't want anybody to get hurt or
25 killed on that tree house, so I gave it over

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1 R. SCORDINO

2 to the Building Department to take care of,
3 okay, it's a very unsafe situation, just like
4 my cousin, okay.

5 Q. Did you make a determination that
6 Mr. Lepper's tree house was unsafe?

7 A. No. The Building Department.
8 Building inspector.

9 Q. You said safety, you repeated it
10 a few times as you leaned into the mic?

11 A. Right.

12 Q. Who made that determination?

13 A. I believe the inspector did.

14 Q. Did you ever see a report that
15 was provided as to the safety of the tree
16 house?

17 A. I believe not.

18 Q. Are you aware that such a
19 report --

20 A. I don't micromanage. It's the
21 building inspector's responsibility to take
22 care of it, not me.

23 Q. The building inspector answers to
24 you, right?

25 A. Yeah.

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1 R. SCORDINO

2 Q. Are you aware of whether a report
3 was submitted by Mr. Lepper attesting to the
4 safety of the tree house?

5 MR. TOSCA: Objection.

6 A. I don't know. I don't recall.

7 Q. You don't recall.

8 A. If he sent it to the building
9 inspector, I don't know.

10 Q. You're the subject of a federal
11 lawsuit, you know that right?

12 MR. TOSCA: Objection

13 A. Absolutely.

14 Q. Any other lawsuits in your life?

15 A. Yes.

16 Q. How many times have you been
17 sued?

18 A. I don't recall exact number.

19 Q. So many you can't recall?

20 A. No, so few I can't remember.

21 MR. TOSCA: Objection.

22 Q. Ever been sued in Federal Court
23 before?

24 A. Yes. And won, by the way, and
25 won.

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1 R. SCORDINO

2 Q. Good.

3 By whom were you sued?

4 A. Mrs. Burrows (phonetic) wanted to
5 put a heroin recovery office right next to
6 where the school is and we spent a lot of
7 money in federal court, a lot of attorneys
8 because it wasn't part of our quality of life
9 in our Village, so we fought very hard not to
10 have that there.

11 Q. Who made that determination?

12 A. One of the judges.

13 Q. Who made the determination it was
14 not part of your quality of life?

15 MR. TOSCA: Objection.

16 A. I was a trustee then, it went
17 back, it was another mayor that made that
18 decision.

19 Q. Did you support that decision?

20 A. Absolutely.

21 Q. And today, who makes the
22 decisions about the quality of life in the
23 Village?

24 MR. TOSCA: Objection.

25 A. I do.

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1 R. SCORDINO

2 Q. Do you know if Mr. Fellman ever
3 inspected or went in or determined the safety
4 of Mr. Lepper's tree house?

5 A. You have to ask Mr. Fellman.

6 Q. Do you know?

7 A. No. Ask Mr. Fellman.

8 Q. Does it matter?

9 A. Yeah.

10 MR. TOSCA: Objection.

11 A. You're asking the question, it
12 must matter to you right, so I would ask him.
13 I don't get involved in it. I don't get
14 involved. Building inspector, they take care
15 of their stuff, treasury, they take care of
16 their stuff. Highway Superintendent takes
17 care of their -- Code Enforcement takes care
18 of their -- I oversee everybody, if there is a
19 problem, they come to me. Obviously it's not
20 a problem, he took care of it.

21 Q. These are the folks that answer
22 to you, right?

23 MR. TOSCA: Objection.

24 A. Yes.

25 Q. So as you sit here today, the

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1 R. SCORDINO

2 threat of daily fines still exists for
3 Mr. Lepper; is that right?

4 MR. TOSCA: Objection.

5 A. You have to ask the building
6 inspector. I don't know. I have no idea.

7 Q. Have you spoken to the building
8 inspector?

9 A. Have I spoken, I speak to him a
10 lot, not about this issue.

11 Q. You don't speak to him about
12 Mr. Lepper's case.

13 A. No.

14 Q. When you got sued, what were you
15 doing?

16 A. What was I doing?

17 Q. Um-hum.

18 A. I have no idea.

19 Q. Did you receive notice of this
20 lawsuit?

21 A. Yes.

22 Q. What, if anything, did you do?

23 A. I did nothing. Nothing. Gerard
24 gives us, the Village attorney gives us
25 updates on it, send it to Gerard.

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1 R. SCORDINO

2 Q. Did you send it to Gerard?

3 A. Yes.

4 Q. Did you come to learn that there
5 was filings in such a case?

6 A. Yes.

7 Q. In those filings, did you learn
8 that a survey was produced?

9 MR. TOSCA: Objection.

10 A. I don't really know. You're
11 talking about building inspector stuff, I
12 don't get involved in that. I let the
13 attorneys take care of it.

14 Q. You're the one who testified
15 earlier that you patrol the streets in a
16 vehicle provided and paid for by the Village
17 of Babylon --

18 A. I'm listening. I want to make
19 sure I'm close enough to hear you.

20 Q. The same car that the insurance
21 is paid, the gas is paid for which you patrol
22 the streets, you're sitting here and telling
23 me you have no knowledge of whether anything
24 was done after the tickets that were issued to
25 Mr. Lepper?

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1 R. SCORDINO

2 MR. TOSCA: Objection.

3 A. I don't get involved. I don't
4 get involved. I don't get involved in the
5 building inspector's projects or the court,
6 okay. I patrol, again I'll give you the ward,
7 okay, the safety, safety and welfare of all
8 the residents in Babylon Village. You know
9 why, I take an oath for that to follow the
10 Constitution of the United States, the
11 Constitution in the State of New York, just
12 like Mr. Lepper, he's a fireman. He took the
13 same oath when he became a fireman. The codes
14 and regulations of the Village of Babylon, he
15 didn't do it, he didn't get a building permit
16 for it, so I handed it over to the Building
17 Department and the attorneys and let them
18 filter out the situation.

19 Q. Safety, right?

20 A. Safety.

21 Q. Who made that determination?

22 MR. TOSCA: Objection.

23 Q. Sir, you're under oath.

24 MR. TOSCA: Objection.

25 Q. Who made the determination?

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1 R. SCORDINO

2 A. I made the determination by
3 visually looking at it and passed the
4 information over to the Building Department.
5 You would have to be an idiot not to realize
6 that there is safety issues with that tree
7 house. Come on. Some kids gets up there and
8 falls off, breaks their head, breaks their
9 neck on our property, who is responsible? Who
10 is responsible? Who is responsible? Who is
11 responsible? Answer my question now.

12 Q. The safety determination --

13 A. No. Who is responsible if a kid
14 gets up there somehow, we know children today,
15 and falls off and breaks their neck, who is
16 responsible? On our property.

17 MR. MORRIS: It's 4:59. Let's
18 take a minute.

19 (Whereupon, a recess was taken at
20 this time.)

21 (The deposition was concluded at
22 5:00 p.m.)

23
24
25

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A C K N O W L E D G M E N T

STATE OF NEW YORK)
) SS:
COUNTY OF)

I, RALPH A. SCORDINO, hereby certify
that I have read the transcript of my
testimony taken under oath in my deposition of
December 5, 2019; that the transcript is a
true, complete and correct record of my
testimony, and that the answers on the record
as given by me are true and correct.

RALPH A. SCORDINO

Signed and subscribed to before
me, this _____ day
of _____, 20__.

Notary Public, State of New York

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS:
COUNTY OF SUFFOLK)

I, STEPHANIE O'KEEFFE, a Notary
Public within and for the State of New York,
do hereby certify:

That RALPH A. SCORDINO, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such deposition
is a true record of the testimony given by
such witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of December, 2019.


STEPHANIE O'KEEFFE



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*** ERRATA SHEET ***

REALTIME REPORTING, INC.
124 East Main Street, Suite 202
Babylon, New York 11702

NAME OF CASE: LEPPER V VILLAGE OF BABYLON
DATE OF DEPOSITION: DECEMBER 5, 2019
NAME OF WITNESS: RALPH A. SCORDINO

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RALPH A. SCORDINO

Signed and subscribed to before me,
this ____ day of _____, 20__.

Notary Public, State of New York

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EXHIBIT “M”

State of New York County of Suffolk

In the matter of the claim of

JOHN LEPPER and NOELLE LEPPER,

-against-

VILLAGE OF BABYLON;
RALPH SCORDINO, Mayor, KEVIN MULDOWNNEY, Deputy
Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA,
Village Trustee, MARY ADAMS, Village Trustee;
STEPHEN FELLMAN, Village of Babylon Building Inspector;
SUZANNE SCHETTINO, Department of Public Works; GERARD
GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO,
Planning Board, Village of Babylon; and

JOHN AND JANE DOE (municipal agents, employees,
consultants and/or independent contractors) ##1-10 who might
be further identified in further prosecution of this claim,

Respondents

NOTICE OF CLAIM

CORY H. MORRIS

Attorney for Defendant

VICTOR JOHN YANNACONE, JR., of counsel

To: VILLAGE OF BABYLON
153 West Main Street
Babylon, New York 11702



NOTICE OF CLAIM

1. The name and post office address of claimant and claimant's attorney is:

Claimant(s):

John and Noelle Lepper
59 Cockenoe Avenue
Babylon , New York 11702

Attorney(s):

Cory H. Morris
The Law Offices of Cory H. Morris
33 Walt Whitman Rd, suite 310
Dix Hills, New York 11746

2. The nature of the claim:

Claimant John and Noelle Lepper sustained emotional injuries in violation of their civil rights, including but not limited to loss of emotional integrity, loss of dignity, loss of comfort, extreme mental stress, emotional scarring, psychological damages, damage to name and reputation, stigma associated with being labeled a criminal, monetary damages, special damages/costs/fees, loss of income and related damages incurred by and on behalf of Claimants John and Noelle Lepper for the recklessness, carelessness, gross negligence, negligence, intentional conduct, malicious conduct, violation of civil rights, and unlawful conduct of RESPONDENTS, VILLAGE OF BABYLON; RALPH SCORDINO, Mayor, KEVIN MULDOWNY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon; and JOHN AND JANE DOE (collectively referred to herein as "Respondents"), individually and collectively.

3. The time when, place where and the manner in which the claim arose:

The claim arose in the incorporated Village of Babylon, Town of Babylon, Suffolk County, NY starting on or about May 10, 2018 and continuing to this day. Respondents, collectively, knew and had reason to know that this claim was forthcoming and such claims prior to the ninety-days from the filing of the instant notice of claim are incorporated fully herein:

In April, 2018, Claimant John Lepper found a syringe, a hypodermic needle which he reasonably presumed to be utilized in illegal drug use, in his front yard when he was playing with his children. Mr. John Lepper informed his neighbors immediately and was outspoken to the Village of Babylon in trying to find a remedy to shield his children from potential disease and harm caused by used hypodermic needles.

On or about May 3, 2018, after conferring with Claimant NOELLE LEPPER, Claimant John Lepper began to utilize timbers from an old boat house that was destroyed in Superstorm Sandy to create a treehouse to insulate his children from the hypodermic needles he found in and around his property at 59 Cockenoe Avenue within the Village of Babylon.

On or about May 10, 2018, Village of Babylon Building Inspector Stephen Fellman informed Mr. Lepper that "It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit." At no point did Claimants John Lepper or Noelle Lepper (hereinafter "Claimant" or "Claimants") break the law. Respondents, collectively, labored to target otherwise innocent persons within the Village of Babylon for the purpose of extracting sums of money by virtue of enforcement of an ambiguous an

arbitrary Village of Babylon code and local ordinance(s). Claimants endeavored to comply with all applicable state and local laws.

At some point in July, 2018, albeit dated May 21, 2018, Stephen Fellman sent Mr. Lepper a letter titled "Notice of Violation" stating that the letter was to serve as notice that Mr. Lepper "that the aforementioned violations must be corrected before May 23, 2018 or an appearance ticket may be issued." This was done knowing that the Claimant was guilty of no wrongdoing and attempted to comply with the law by submitting, *inter alia*, a building permit to the Village of Babylon as early as May, 2018.

On or about August 14, 2018, Stephen Fellman, as Babylon Village Building Inspector wrote to Mr. Lepper declaring that "Per Section 116 Unsafe Structures of the International Building Code ("IBC") the tree house at the above referenced premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy is issued."

Building Inspector Fellman never identified the nature and manner he claimed the treehouse was an unsafe treehouse. In addition, there is no proof that Babylon Village properly adopted the IBC. Respondents, collectively, filed false charges, entered the property/curtilage of Claimant's home, proceeded to prosecute Claimant on purported Village of Babylon code violations that were ambiguous and did so for the purpose of causing harm, limiting the use of claimant's property and the ability of his children to utilize such property, and extracting monies to which Respondents had no legitimate title or basis to demand.

At a trial against Mr. Lepper, the "testimony of Stephan Fellman...established that he visited the premises in question on May 9, 2018, following receipt of a complaint in the Mayor's office that a treehouse was being constructed," yet no such complaint

was ever shown to Mr. Lepper although he requested a copy on several occasions, the last of which was in writing.

On or about October 17, 2018, after a trial singularly deficient in the procedural due process which should have been afforded a *pro se* defendant in a quasi-criminal proceeding, Mr. Lepper was found in violation of Section 365-26 of the Village of Babylon Code based upon a reference by Hon. John T. Rafter to the Merriam-Webster definition of a building without any citation to the edition and year of publication of that dictionary or explanation of whether it had ever been adopted as an element of the Village of Babylon Code.

The next day, October 18, 2018, Babylon Village Attorney Gerard Glass sent a letter to the Lepper Family, stating, *in toto*, that "As you know this office is counsel to the Village of Babylon. The Court has rendered its decision. Please let me know your intentions. Thank you for your attention and courtesies herein."

The day after Attorney Glass sent his letter, Building Inspector Fellman ordered the treehouse removed. Two days after the Order was issued, Building Inspector Fellman state that "On October 17, 2018 Village Justice John Rafter found you guilty of each offense listed on various summonses you received regarding the construction of a treehouse within your front yard setback. I, as Building Inspector, am ordering the continuation of the stop work order barring any further construction or occupancy of the tree house."

Building Inspector Fellman concluded his October 19, 2018 letter with the threat that the Lepper Family "must remove the tree house in its entirety or summonses may be issued on a daily basis."

These acts, culminating with the October 19, 2018 letter coupled with statements made in open court show that no legitimate basis

existed for the alleged permitting process and that the decision to limit the use of the Claimant's property was a forgone conclusion.

Respondents, all of them, knew and had reason to know that the Claimant's use of the property was related to the hypodermic needles found on and around Claimant's property.

Respondents, all of them, knew and had reason to know that the Claimant's use of property, in erecting a child's play tree house, was for the purpose of Claimant's child(ren) in both their protection and in directing the upbringing and education of Claimant's youth, free from the scourge of Heroin that has undertaken Long Island, New York.

Respondents, all of them, acted, defrauded, conspired and took affirmative steps at the direction of, with the assistance of, encouragement and support of private actors, including but not limited to a Claimant's neighbor who, upon information and belief, shares intimate relations with some of the Respondents claimed herein.

Respondents, cloaked with the authority of law, did falsely accuse, maliciously prosecute, defame, slander and intimidate the Claimants to limit the use of their property, silence the public statements of Claimants, silence Claimant's criticism of Respondents' actions, or lack of therein, relating to the ongoing criminal element surrounding Claimant's property, depriving Claimant of fair legal process, denying Claimant full and fair use of Claimant's property and subjecting claimant to unwarranted and excessive fines.

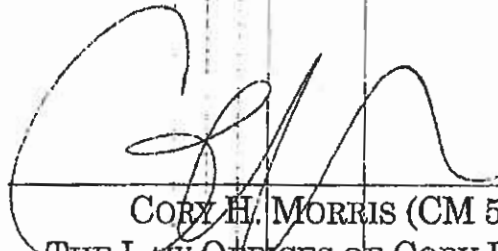
4. The items of damage and injury claimed are:

Claimant sustained emotional injuries in violation of his civil rights, including but not limited to loss of emotional integrity, loss of dignity, loss of comfort, extreme mental stress, emotional scarring, psychological damages, damage to name and reputation, stigma associated with being labeled a criminal, monetary damages, special damages/costs/fees, loss of income and related damages incurred by and on behalf of Claimant for the recklessness, carelessness, gross negligence, negligence, intentional conduct, malicious conduct, violation of civil rights, and unlawful conduct of RESPONDENTS individually and collectively.

The undersigned claimant therefore, presents this claim for adjustment and payment of continuing damages amounting in excess of \$100,000 in damages, fines and reasonable attorney's fees. You are notified that unless it is adjusted and paid within the time provided by law from date of presentation to you, the claimant intends to commence an action on this claim or incorporate such state law claims into an existing action.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

DATED AT Dix Hills, New York
December 6, 2018



CORY H. MORRIS (CM 5225)

THE LAW OFFICES OF CORY H. MORRIS

Attorney for the Claimant

Office & P.O. Address

33 Walt Whitman Rd, suite 310

Dix Hills, New York 11746

Phone: (631) 450-2515

FAX: (631) 223-7377

email Cory.H.Morris@protonmail.com

INDEPENDENT VERIFICATION

State of New York
County of Suffolk } ss:

Noelle Lepper duly affirming under the penalty of perjury deposes and says that I am the one of the claimants filing this Notice of Claim; that I have read the foregoing Notice of Claim and know the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief.

Duly affirmed under penalty of
perjury on December 6, 2018


NOELLE LEPPER

Sworn before me on the
6th of December, 2018


NOTARY PUBLIC

LINDA J. SPIGDEN
Notary Public, State of New York
No. 4137650
Created in Nassau County
Commission Expires February 27, 2019

INDEPENDENT VERIFICATION

State of New York }
County of Suffolk } ss:

John Lepper duly affirming under the penalty of perjury deposes and says that I am the one of the claimants filing this Notice of Claim; that I have read the foregoing Notice of Claim and know the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief.

Duly affirmed under penalty of
perjury on December 6, 2018


JOHN LEPPER

Sworn before me on the
6th of December, 2018


NOTARY PUBLIC

LINDA T. TYSON
Notary Public, State of New York
No. 4067560
Qualified in Nassau County
Commission Expires February 27, 20 19

EXHIBIT “N”

State of New York County of Suffolk

In the matter of the claim of

JOHN LEPPER,

-against-

VILLAGE OF BABYLON;
RALPH SCORDINO, Mayor, **KEVIN MULDOWNEY**, Deputy Mayor, **ROBYN SILVESTRI**, Village Trustee, **TONY DAVIDA**, Village Trustee, **MARY ADAMS**, Village Trustee;
STEPHEN FELLMAN, Village of Babylon Building Inspector;
SUZANNE SCHETTINO, Department of Public Works; **GERARD GLASS**, Esq., Village of Babylon Attorney; **DEBORAH LONGO**, Planning Board, Village of Babylon; and
JOHN AND JANE DOE (municipal agents, employees, consultants and/or independent contractors) ##1-10 who might be further identified in further prosecution of this claim,

Respondents

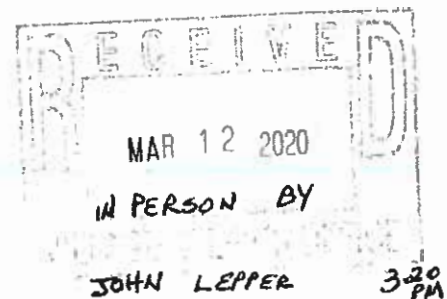
NOTICE OF CLAIM

CORY H. MORRIS

Attorney for John Lepper

VICTOR JOHN YANNAcone, JR., of counsel

To: VILLAGE OF BABYLON
153 West Main Street
Babylon, New York 11702



NOTICE OF CLAIM

1. The name and post office address of claimant and claimant's attorney is:

Claimant(s):

John Lepper
59 Cockenoe Avenue
Babylon, New York 11702

Attorney(s):

Cory H. Morris
The Law Offices of Cory H. Morris
135 Pinelawn Road, Suite 250s
Melville NY 11747

2. The nature of the claim:

Claimant John Lepper sustained emotional injuries in violation of their civil rights, including but not limited to loss of emotional integrity, loss of dignity, loss of comfort, extreme mental stress, emotional scarring, psychological damages, damage to name and reputation, stigma associated with being labeled a criminal, monetary damages, special damages/costs/fees, loss of income and related damages incurred by and on behalf of Claimant John Lepper for the recklessness, carelessness, gross negligence, negligence, intentional conduct, malicious conduct, violation of civil rights, and unlawful conduct of RESPONDENTS, VILLAGE OF BABYLON; RALPH SCORDINO, Mayor, KEVIN MULDOWNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon; and JOHN AND JANE DOE (collectively referred to herein as "Respondents"), individually and collectively.

3. The time when, place where and the manner in which the claim arose:

The claim regarding malicious prosecution results as the dismissal of charges that initially arose in the incorporated Village of Babylon, Town of Babylon, Suffolk County, NY starting on or about May 10, 2018 which culminated in the reversal and dismissal of accusatory instruments against John Lepper. Respondents, know and have reason to know that this claim for malicious prosecution was forthcoming and such claims prior to the ninety-days from the filing of the instant notice of claim are incorporated fully herein:

In April, 2018, Claimant John Lepper found a syringe, a hypodermic needle which he reasonably presumed to be utilized in illegal drug use, in his front yard when he was playing with his children. Mr. John Lepper informed his neighbors immediately and was outspoken to the Village of Babylon in trying to find a remedy to shield his children from potential disease and harm caused by used hypodermic needles.

On or about May 3, 2018, after conferring with NOELLE LEPPER, Claimant John Lepper began to utilize timbers from an old boat house that was destroyed in Superstorm Sandy to create a treehouse to insulate his children from the hypodermic needles he found in and around his property at 59 Cockenoe Avenue within the Village of Babylon.

On or about May 10, 2018, Village of Babylon Building Inspector Stephen Fellman informed Mr. Lepper that "It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit." At no point did John Lepper or Noelle Lepper (hereinafter "Claimant" or "Claimants") break the law. Respondents, collectively, labored to target otherwise innocent persons within

the Village of Babylon for the purpose of extracting sums of money by virtue of enforcement of an ambiguous an arbitrary Village of Babylon code and local ordinance(s). Claimants endeavored to comply with all applicable state and local laws.

At some point in July, 2018, albeit dated May 21, 2018, Stephen Fellman sent Mr. Lepper a letter titled "Notice of Violation" stating that the letter was to serve as notice that Mr. Lepper "that the aforementioned violations must be corrected before May 23, 2018 or an appearance ticket may be issued." This was done knowing that the Claimant was guilty of no wrongdoing and attempted to comply with the law by submitting, *inter alia*, a building permit to the Village of Babylon as early as May, 2018.

On or about August 14, 2018, Stephen Fellman, as Babylon Village Building Inspector wrote to Mr. Lepper declaring that "Per Section 116 Unsafe Structures of the International Building Code ("IBC") the tree house at the above referenced premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy is issued."

Building Inspector Fellman never identified the nature and manner he claimed the treehouse was an unsafe treehouse. In addition, there is no proof that Babylon Village properly adopted the IBC. Respondents, collectively, filed false charges, entered the property/curtilage of Claimant's home, proceeded to prosecute Claimant on purported Village of Babylon code violations that were ambiguous and did so for the purpose of causing harm, limiting the use of claimant's property and the ability of his children to utilize such property, and extracting monies to which Respondents had no legitimate title or basis to demand.

At a trial against Mr. Lepper, the "testimony of Stephan Fellman...established that he visited the premises in question on May 9, 2018, following receipt of a complaint in the Mayor's office

that a treehouse was being constructed,” yet no such complaint was ever shown to Mr. Lepper although he requested a copy on several occasions, the last of which was in writing.

On or about October 17, 2018, after a trial singularly deficient in the procedural due process which should have been afforded a *pro se* defendant in a quasi-criminal proceeding, Mr. Lepper was found in violation of Section 365–26 of the Village of Babylon Code based upon a reference by Hon. John T. Rafter to the Merriam-Webster definition of a building without any citation to the edition and year of publication of that dictionary or explanation of whether it had ever been adopted as an element of the Village of Babylon Code.

Such guilty finding against John Lepper was reversed on or about December 20, 2019. Babylon Village Attorney Gerard Glass did admit to press outlets that he knew the accusatory instrument was insufficient yet prosecuted John Lepper *pro-se* nonetheless.

The next day, October 18, 2018, Babylon Village Attorney Gerard Glass sent a letter to the Lepper Family, stating, *in toto*, that “As you know this office is counsel to the Village of Babylon. The Court has rendered its decision. Please let me know your intentions. Thank you for your attention and courtesies herein.”

Based on the guilty conviction that has now been reversed and dismissed, the day after Attorney Glass sent his letter, Building Inspector Fellman ordered the treehouse removed. Two days after the now-reversed-and-dismissed Order was issued, Building Inspector Fellman state that “On October 17, 2018 Village Justice John Rafter found you guilty of each offense listed on various summonses you received regarding the construction of a treehouse within your front yard setback. I, as Building Inspector, am ordering the continuation of the stop work order barring any further construction or occupancy of the tree house.”

Building Inspector Fellman concluded his October 19, 2018 letter with the threat that the Lepper Family "must remove the tree house in its entirety or summonses may be issued on a daily basis."

These acts, culminating with the October 19, 2018 letter coupled with statements made in open court show that no legitimate basis existed for the alleged permitting process and that the decision to limit the use of the Claimant's property was a forgone conclusion.

Respondents, all of them, knew and had reason to know that the Claimant's use of the property was related to the hypodermic needles found on and around Claimant's property.

Respondents, all of them, knew and had reason to know that the Claimant's use of property, in erecting a child's play tree house, was for the purpose of Claimant's child(ren) in both their protection and in directing the upbringing and education of Claimant's youth, free from the scourge of Heroin that has undertaken Long Island, New York.

Respondents, all of them, acted, defrauded, conspired and took affirmative steps at the direction of, with the assistance of, encouragement and support of private actors, including but not limited to a Claimant's neighbor who, upon information and belief, shares intimate relations with some of the Respondents claimed herein together with the Village of Babylon Judge, John Rafter.

Respondents, cloaked with the authority of law, did falsely accuse, maliciously prosecute, defame, slander and intimidate the Claimant to limit the use of his property, silence the public statements of Claimant, silence Claimant's criticism of Respondents' actions, or lack of therein, relating to the ongoing

criminal element surrounding Claimant's property, depriving Claimant of fair legal process, denying Claimant full and fair use of Claimant's property and subjecting claimant to unwarranted and excessive fines.

Additionally, Respondents did contact the Suffolk County Police Department and make false allegations seeking to have John Lepper falsely arrested. To wit, Respondent Mayor Sciordino did contact the Suffolk County Police Department that visited with John Lepper and did inform John Lepper that he was the subject of a criminal complaint by, among others, Respondent Mayor Sciordino.

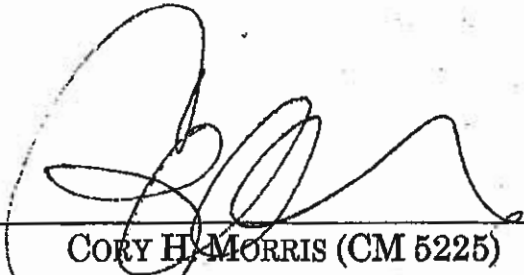
4. The items of damage and injury claimed are:

Claimant sustained emotional injuries in violation of his civil rights, including but not limited to loss of emotional integrity, loss of dignity, loss of comfort, extreme mental stress, emotional scarring, psychological damages, damage to name and reputation, stigma associated with being labeled a criminal, monetary damages, special damages/costs/fees, loss of income and related damages incurred by and on behalf of Claimant for the recklessness, carelessness, gross negligence, negligence, intentional conduct, malicious conduct, violation of civil rights, and unlawful conduct of RESPONDENTS individually and collectively.

The undersigned claimant therefore, presents this claim for adjustment and payment of continuing damages amounting in excess of \$2,000,000 in damages, fines and reasonable attorney's fees.

You are notified that unless it is adjusted and paid within the time provided by law from date of presentation to you, the claimant intends to commence an action on this claim or incorporate such state law claims into an existing action.

DATED AT Melville, New York
March 10, 2020



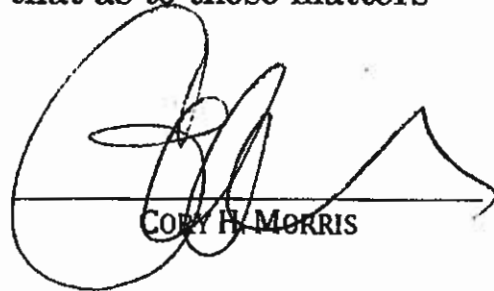
CORY H. MORRIS (CM 5225)
THE LAW OFFICES OF CORY H. MORRIS
Attorney for the Claimant
Office & P.O. Address
135 Pinelawn Road, Suite 250s
Melville NY 11747
Phone: (631) 450-2515
FAX: (631) 223-7377
email Cory.H.Morris@protonmail.com

ATTORNEY VERIFICATION

State of New York }
County of Suffolk } ss:

Cory H. Morris duly affirming under the penalty of perjury deposes and says that I am the attorney representing the claimant filing this Notice of Claim; that I have read the foregoing Notice of Claim and know the contents thereof; that the same is true to deponents' own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters the source of my information and the basis for my belief is a review of the file I maintain on this matter, investigation, and communications with the claimant, and that as to those matters deponent believes it to be true

Duly affirmed under penalty of
perjury on March 10, 2020



CORY H. MORRIS

State of New York County of Suffolk

In the matter of the claim of

JOHN LEPPER,

—against—

VILLAGE OF BABYLON;
RALPH SCORDINO, Mayor, **KEVIN MULDOWNNEY**, Deputy Mayor, **ROBYN SILVESTRI**, Village Trustee, **TONY DAVIDA**, Village Trustee, **MARY ADAMS**, Village Trustee;
STEPHEN FELLMAN, Village of Babylon Building Inspector; **SUZANNE SCHETTINO**, Department of Public Works; **GERARD GLASS**, Esq., Village of Babylon Attorney; **DEBORAH LONGO**, Planning Board, Village of Babylon; and
Municipal agents, employees, consultants and independent contractors ##1–10 who might be further identified in further prosecution of this claim,

Respondents

NOTICE OF CLAIM

LAW OFFICES OF CORY H. MORRIS

Attorneys for John Lepper

135 Pinelawn Road, Suite 250s

Melville NY 11747

Phone: 631-450-2515 | FAX: 631-223-7377

To: **VILLAGE OF BABYLON**
153 West Main Street
Babylon, New York 11702

EXHIBIT “O”

1
2
3 50-h HEARING

4 -----X
5 In the Matter of the Claim of

6 JOHN LEPPER,

7 CLAIMANT,

8 -against-

9 VILLAGE OF BABYLON; RALPH SCORDINO, Mayor,
10 KEVIN MULDOWNY, Deputy Mayor, ROBYN
11 SILVESTRI, Village Trustee, TONY DAVIDA,
12 Village Trustee, MARY ADAMS, Village
13 Trustee; STEPHEN FELLMAN, Village of Babylon
14 Building Inspector; SUZANNE SCHETTINO,
15 Department of Public Works, GERARD GLASS,
16 ESQ., Village of Babylon Attorney; DEBORAH
LONGO, Planning Board, Village of Babylon;
and JOHN AND JANE DOE (municipal agents,
employees, consultants and/or independent
contractors) #1-10 who might be further
identified in further prosecution of this
claim,

RESPONDENTS.

-----X
17 DATE: July 20, 2020
18 TIME: 10:38 a.m.
19
20

21 VIDEOCONFERENCE 50-h HEARING of JOHN
22 LEPPER, the Claimant in the above-entitled
23 matter, pursuant to a Statute, before Nicole
24 Veltri, RPR, CRR, a Notary Public of the
25 State of New York.

A P P E A R A N C E S:

THE LAW OFFICES OF CORY H. MORRIS

Attorney for the Claimant

135 Pinelawn Road, Suite 250s

Melville, New York 11747

BY: CORY H. MORRIS, ESQ.

KELLY RODE KELLY, LLP

Attorney for the Respondents

330 Old Country Road

Mineola, New York 11501

BY: ERIC TOSCA, ESQ.

File #: 148530752

ALSO PRESENT:

**SHANNON FILMORE ESQ.: Associate with Kelly
Rode Kelly, LLP**

**GERARD GLASS, ESQ.: Village of Babylon
Attorney**

*** * ***

1 J. LEPPER

2 J O H N L E P P E R, called as a witness,
3 having been first duly sworn by a Notary
4 Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. TOSCA:

8 Q. Please state your name for the
9 record.

10 A. John Lepper.

11 Q. What is your address?

12 MR. MORRIS: This is done pursuant
13 to Section 50-h. This will not be
14 video recorded. In other words, we do
15 not consent to any video recording. I
16 would like to note for the record, we
17 have present here, it looks like Gerard
18 Glass, Shannon Filmore, John Lepper,
19 me, Cory Morris, Eric Tosca, and
20 someone from Veritext. Is that
21 correct? Counsel, is that correct?

22 MR. TOSCA: You have noted
23 everybody who's present during the
24 video, yes.

25 MR. MORRIS: Is anyone else

1 J. LEPPER

2 present who I have not noted, counsel?

3 MR. TOSCA: Not that I know of.

4 Is there anybody present on your end

5 other than people who have appeared

6 here?

7 MR. MORRIS: No. I just put it on

8 the record. That's why I'm asking you.

9 MR. TOSCA: Okay.

10 MR. MORRIS: Are you video

11 recording this?

12 MR. TOSCA: Of course, it's video

13 recorded. It's here on video. If you

14 want to object to any video display,

15 you can do what you wish; but the point

16 is, I don't know that a video recording

17 is objectionable anyway.

18 MR. MORRIS: Sure. John, please

19 turn off your video.

20 MR. TOSCA: I'm going to object to

21 that. There's no reason that his video

22 should be off.

23 MS. FILMORE: I think what the

24 problem is, is that the difference -- I

25 mean, this technically isn't being

1 J. LEPPER

2 video recorded. It's being recorded,
3 but it's not being recorded on a thing
4 that can be played again. Does that
5 make sense?

6 MR. TOSCA: I haven't hired a
7 videographer for this. Not that I
8 shouldn't have been able to if I
9 wanted, but I did not; and to that
10 extent, I'm going to request that
11 Mr. Lepper turn on the video.

12 MR. MORRIS: I'm sorry. You cut
13 out, counsel.

14 MR. TOSCA: In light of the fact
15 that there's no video recording not
16 that I think that that's a fair
17 objection, it is not. It doesn't
18 matter because we have no videographer,
19 and this is just live streaming; so in
20 light of that, I do expect Mr. Lepper's
21 appearance and request that the video
22 be on.

23 MR. MORRIS: Counsel, essentially
24 can we confirm that you will not be
25 recording this?

1 J. LEPPER

2 MR. TOSCA: It's been confirmed
3 already. I think you heard Ms. Veltri.

4 MR. MORRIS: Okay. I'm asking you
5 to confirm that you are not video
6 recording this.

7 MR. TOSCA: I am not video
8 recording this.

9 MS. FILMORE: Neither am I.

10 MR. MORRIS: All right, because,
11 again, we don't consent to video
12 recording.

13 Mr. Lepper, please put your video
14 back on.

15 MR. TOSCA: Thank you. Okay.
16 Shall we begin? We need your name and
17 address.

18 MR. MORRIS: Note my objection.
19 You're here relative to the occurrence
20 and the extent of the injuries and
21 damages pursuant to section 50-h. He's
22 appearing through counsel. If not, I
23 would like everyone here to give me
24 their personal address.

25 MR. TOSCA: You're not going to

1 J. LEPPER

2 get my personal address. That's number
3 one, and I'm not asking for yours; and
4 this is ridiculous, okay? The first
5 question we're going to have a problem
6 with, you know, Mr. --

7 MR. MORRIS: Counsel, mark it for
8 a ruling.

9 MR. TOSCA: Understand if you
10 impede the 50-h hearing, there are
11 remedies to that; and I'll exercise
12 them. But in any event, are you not
13 permitting your client to give his
14 address? I don't know what you mean by
15 mark it for a ruling. Are you
16 directing your witness not to give his
17 address?

18 MR. MORRIS: Counsel, I've placed
19 on the record our objection. It's now
20 10:42.

21 MR. TOSCA: Are you not permitting
22 the witness to give his address?

23 MR. MORRIS: He's appearing
24 through counsel, 135 Pinelawn Road,
25 Suite 250S --

1 J. LEPPER

2 MR. TOSCA: This is getting
3 nowhere.

4 Q. Mr. Lepper, what is your address?

5 MR. MORRIS: Mr. Lepper, note my
6 objection. Don't answer.

7 Q. Mr. Lepper, presently you're
8 appearing for a 50-h hearing; do you
9 understand that?

10 A. Yes, I do.

11 MR. MORRIS: Objection.
12 Examination.

13 Q. Do you understand that in this
14 hearing your testimony is being taken under
15 oath?

16 A. Yes, I do.

17 Q. And you've been sworn in and
18 you're swearing to tell the truth, correct?

19 MR. MORRIS: Objection.

20 A. Yes.

21 Q. So, Mr. Lepper, the address where
22 you're currently sitting, where is that?

23 A. I'm not sure.

24 Q. Is it at an office of Mr. Morris?

25 A. Yes.

1 J. LEPPER

2 Q. Is anyone else in the room with
3 you?

4 A. No.

5 Q. All right.

6 Mr. Lepper, are you familiar with
7 the Notice of Claim that you served in this
8 matter?

9 MR. MORRIS: Objection.

10 Q. I'm sorry?

11 MR. MORRIS: Note my objection.

12 MR. TOSCA: Okay. Will you allow
13 your witness to answer --

14 A. Yes.

15 Q. How many Notices of Claim have you
16 filed against the Village of Babylon?

17 A. I don't recall.

18 Q. Do you recall at least one of
19 them?

20 A. Yes.

21 Q. Do you recall two?

22 A. I don't recall.

23 MR. TOSCA: Nicole, if you could
24 mark as Exhibit A for the 50-h hearing
25 the Notice of Claim and put it on the

1 J. LEPPER

2 screen for the witness.

3 (Whereupon, the aforementioned
4 Notice of Claim was marked as
5 Respondents' Exhibit A for
6 identification as of this date by the
7 Reporter.)

8 MR. MORRIS: It's now 10:47 a.m.
9 Can we note for the record counsel is
10 having difficulty admitting an exhibit,
11 displaying an exhibit to the claimant.
12 I'm going to suggest maybe that you
13 want to take a few minutes, Mr. Tosca,
14 and figure out the technical
15 difficulties perhaps now and return in
16 five or ten minutes.

17 MR. TOSCA: If you wish to do
18 that. That's fine. Five minutes is
19 all I think I need. The host disabled.

20 (Whereupon, a short recess was
21 taken.)

22 MR. TOSCA: The time now is 10:55.
23 Counsel, have you resolved the
24 technical difficulties of which you
25 experienced earlier.

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2 MR. TOSCA: With regard to this,
3 we come to a reconciliation to admit
4 the Notice of Claim to the witness.

5 Q. Mr. Lepper, I'm going to ask you
6 are you able to see on the screen the Notice
7 exhibit?

8 A. I can see it, but I can't read it.

9 Q. You can't read it; is it too
10 blurry or something?

11 A. It's too small.

12 MR. TOSCA: Is there any way you
13 can enlarge this for the witness to
14 see?

15 Q. Now that we've enlarged it,
16 Mr. Lepper, is it visible for you to see?

17 A. I can see it. It's still very
18 small, and my glasses are fogging up. Can I
19 get a printed copy?

20 Q. Well, your attorney should have
21 one.

22 MR. TOSCA: Mr. Morris, do you
23 have a printed copy for him?

24 MR. MORRIS: Let me see. The
25 document that you're displaying seems

1 J. LEPPER

2 to be 11 pages. I'm not sure how that
3 can be but --

4 MR. TOSCA: How many pages are
5 your document?

6 MR. MORRIS: I'm not sure to which
7 document you're referring, but I know
8 we didn't serve an 11-page Notice of
9 Claim.

10 MR. TOSCA: Okay. I have a
11 ten-page Notice of Claim with a
12 one-page face sheet. So how many pages
13 is your Notice of Claim?

14 MR. MORRIS: I'm not sure to which
15 Notice of Claim you are referring and
16 for that matter --

17 MR. TOSCA: This is the one that
18 was served in March. Mr. Morris, are
19 you there?

20 MR. MORRIS: I'm here.

21 MR. TOSCA: I'm asking you about
22 the Notice of Claim. You said that you
23 don't have an 11-page Notice of Claim,
24 and I explained that the first page is
25 just a front sheet. First page is the

1 J. LEPPER

2 face sheet, so there should be ten
3 pages. Is your Notice of Claim not ten
4 pages?

5 MR. MORRIS: Counsel, I suggest as
6 the time now is 10:59 a.m. that you ask
7 questions as Section 50-h of the
8 General Municipal Law contemplates.

9 MR. TOSCA: You're being
10 obstructionist.

11 MR. MORRIS: It would appear as to
12 what that is.

13 MR. TOSCA: I'm sorry. I didn't
14 hear you.

15 MR. MORRIS: I understand. That's
16 why I'm trying to speak slowly and not
17 speak over you. So I'm going to
18 continue. I'm going to read Section
19 50-h into the record, the first
20 admission, so that it is clear. Quote,
21 wherever a Notice of Claim is filed
22 against a city, county, town, village,
23 fire district, ambulance district, or
24 school district, the city, county,
25 town, village, fire district, ambulance

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2 district, or school district shall have
3 the right to demand an examination of
4 the claimant relative to the occurrence
5 and extent of the injuries or damages
6 for which a claim is made, which
7 examination shall be upon oral
8 questions unless the parties otherwise
9 stipulate and may include a physical
10 examination of the claimant by a duly
11 qualified physician, end quote.

12 It continues, if I suggest to you
13 that you ask questions as the law
14 considers relative to the occurrence
15 and extent of the injuries or damages.
16 If you would like, counselor, we can
17 stipulate to the Notice of Claim being
18 just that.

19 MR. TOSCA: In any event, do you
20 have a hard copy to show your witness?

21 MR. MORRIS: I don't have a hard
22 copy of what you presented, counselor.

23 MR. TOSCA: Okay. You don't have
24 a hard copy of the Notice of Claim that
25 you filed with the village?

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2 MR. MORRIS: Counselor, please
3 proceed in your question.

4 MR. TOSCA: We'll do as best we
5 can with what's on the screen.

6 Q. So if you can scroll down, page
7 two, all right. Mr. Lepper, you had
8 indicated in the Notice of Claim that your
9 address at the time the Notice of Claim was
10 filed was 59 Cockenoe Avenue in Babylon, New
11 York, 11702; is that correct?

12 MR. MORRIS: Note my objection.
13 Do not answer.

14 Q. Is that an incorrect address?

15 MR. MORRIS: Note my objection.
16 Do not answer. If you could scroll
17 down, .

18 Q. Mr. Lepper, are you claiming
19 emotional injuries due to this claim?

20 MR. MORRIS: Note my objection.
21 Are you asking him to read off a screen
22 right now, or are you asking him
23 questions as the law contemplates?

24 Q. Well, number one, Mr. Lepper, are
25 you able to read the screen that's in front

1 J. LEPPER

2 of you?

3 MR. MORRIS: Counsel, please
4 answer my question before you proceed
5 in showing him this document and asking
6 questions.

7 MR. TOSCA: I am not going to
8 answer these questions. I am not here
9 for a hearing.

10 MR. MORRIS: The time now is
11 11:02. Counsel, I suggest we take five
12 minutes and you figure it out, okay?

13 MR. TOSCA: No. There's no reason
14 to take five minutes.

15 MR. MORRIS: Mr. Lepper, turn your
16 video off.

17 MR. TOSCA: You're obstructing the
18 50-h hearing. You're obstructing the
19 50-h hearing.

20 MR. MORRIS: Counsel, do you want
21 to show him a document; or do you want
22 to ask him questions because what
23 you've done with the document, we're
24 going to ask that you put it aside.
25 Since we cannot do that and we are

1 J. LEPPER

2 accommodating your request, right, you
3 adjust the claim, right? You either
4 show him the document and then once
5 you're finished take the document off
6 the screen like any other examination;
7 or if you want to ask him about the
8 document, not ask him questions while
9 you show him a document, we'll allow
10 you to proceed.

11 MR. TOSCA: I will ask the
12 questions as I see fit. They are not
13 objectionable. What you're doing is
14 obstructing the deposition. It began
15 with a very simple question, what's
16 your address. Now, your objections are
17 just --

18 MR. MORRIS: Your video is
19 breaking up.

20 MR. TOSCA: I said your questions
21 are impeding this 50-h hearing,
22 detrimental to the rights of the
23 defendants in this case and ask
24 questions in a 50-h --

25 MR. MORRIS: You're a respondent.

1 J. LEPPER

2 Perhaps you don't understand the law.
3 Your a respondent because we haven't
4 sued you, not yet.

5 MR. TOSCA: Mr. Morris, you say
6 what you wish, okay? In the meantime,
7 you're impeding the ability of the
8 village to take a 50-h hearing. We'll
9 proceed, but your conduct today is
10 detrimental to the rights of the
11 village and the other respondents.

12 MR. MORRIS: Counselor, are you
13 done? I don't want to cut you off.

14 MR. TOSCA: No. I'm done.

15 MR. MORRIS: Madam Court Reporter,
16 are you able to take down all the of
17 this? Mr. Tosca, we object to your
18 characterization. Would you like to
19 ask the witness questions, or would you
20 like to show him a document? Please
21 let us know so we can proceed today.

22 MR. TOSCA: Number one, I can do
23 both. I'm showing him a document,
24 looked at the Notice of Claim; and I've
25 asked him if he could read that at

1 J. LEPPER

2 which time you objected.

3 MR. MORRIS: Note my objection.

4 MR. TOSCA: I'm asking him if he's
5 claiming emotional injuries. You
6 objected.

7 MR. MORRIS: Are you asking him
8 about the document, or are you asking
9 him if he's claiming emotional injuries
10 because if that's the case --

11 MR. TOSCA: My questions --

12 MR. MORRIS: Counsel, I did not
13 interrupt you. I ask that we be
14 allowed to speak. If you can't do
15 that, we're done.

16 MR. TOSCA: Go on, Mr. Morris.

17 MR. MORRIS: If you are done
18 presenting the document to him, we ask
19 that you take it off the screen as we
20 would do in any other examination.
21 That is it. If you cannot do that
22 because of technical difficulties of
23 which you have already demonstrated
24 here today, then we will not have to
25 proceed in this matter. You will take

1 J. LEPPER

2 your time. You will figure out how to
3 use a computer, and we will proceed.

4 MR. TOSCA: You know, your remarks
5 are uncalled for. There have been no
6 technical difficulties. We've been
7 trying to accommodate your client with
8 a screen that he says he could not see.
9 That's not a technical difficulty.
10 That's a difficulty with your client
11 being able to see something in front of
12 him. If he says he can't read it, we
13 made it bigger for him.

14 Now, with that being said, I'm
15 asking him questions. There's a
16 document on the screen. I will be
17 asking him questions about the
18 document, and I will be asking him
19 questions that pertain to the document.
20 So there's no reason to take the
21 document off the screen.

22 MR. MORRIS: Madam Court Reporter,
23 what do you mean he cut out? Can you
24 explain.

25 COURT REPORTER: I didn't hear

1 J. LEPPER

2 what he said.

3 MR. MORRIS: If you could please
4 place that on the record.

5 MR. TOSCA: Can you read back what
6 I said, Ms. Veltri.

7 (Whereupon, the referred to
8 colloquy was read back by the
9 reporter.)

10 MR. MORRIS: Note my objection.
11 Counselor, once you're done with the
12 document, are you able to take it off
13 the screen?

14 MR. TOSCA: After I'm done with
15 the document, we are able to remove it.

16 MR. MORRIS: Very good.

17 Mr. Lepper, please turn your video
18 back on. The time now is 11:08 a.m.

19 Q. Looking at the document that's now
20 on the screen, Mr. Lepper, can you read
21 that?

22 A. No.

23 Q. Can we go to the next page? Are
24 you able to read what's designated as page
25 three as far as the time, place, where, and

1 J. LEPPER

2 manner in which the claim arose?

3 MR. MORRIS: Note my objection,
4 I'm looking here it says page four of
5 11.

6 MR. TOSCA: Top of the page it
7 says three.

8 MR. MORRIS: Counsel, that's your
9 testimony. Not the client. I'm
10 looking at a document that has eleven
11 pages, which it might be at the top of
12 page three. Again, are you
13 representing --

14 MR. TOSCA: It does say four of
15 eleven.

16 MR. MORRIS: Okay. So the record
17 is clear, you're referring to a page
18 three on a document that has eleven
19 pages. Perhaps you should have
20 provided this in advance of today.

21 MR. TOSCA: It's something you
22 already have. Any way, are you going
23 to let your witness answer the
24 question?

25 MR. MORRIS: Do you want to send

1 J. LEPPER

2 it to me so we have a physical copy and
3 maybe we'll print it out? For that
4 matter, it looks like Shannon Filmore
5 is speaking; but we can't hear her.

6 MR. TOSCA: Shannon, are you
7 talking?

8 MS. FILMORE: No. I'm talking to
9 myself. I just got an email from
10 somebody.

11 MR. TOSCA: Anyway, it has nothing
12 to do with this.

13 MS. FILMORE: It has nothing to do
14 with this.

15 MR. TOSCA: Mr. Morris, we don't
16 need to send that to you. The exhibits
17 were -- this is a Notice of Claim that
18 you had filed. Stop.

19 MR. MORRIS: If it's a Notice of
20 Claim that I have filed, what's the
21 confusion here? You're going to ask my
22 client to read it?

23 MR. TOSCA: No. I want to know if
24 he's reading what's on the screen, and
25 I want him to identify the document.

1 J. LEPPER

2 If he's not able to read it, which I
3 don't understand, but he'll tell us
4 that. I don't need you to tell me.

5 MR. MORRIS: Let me explain this
6 to you, counselor. Again, let me
7 explain this to, counsel, you're making
8 representations of a document that's
9 eleven pages long. We have not
10 received the document that you're
11 marking and relying on. Should you
12 wish to rely on the document and you
13 would like to provide me a copy, I will
14 again accommodate your request in
15 printing it out and presenting it to
16 the witness to avoid the technical
17 difficulties of which we have now
18 experienced here for almost 45 minutes.

19 MR. TOSCA: There's no technical
20 difficulty. You're being an
21 obstructionist.

22 MR. MORRIS: Would you like me to
23 print out the document, counselor, and
24 that will avoid the situation?

25 MR. TOSCA: Please print out the

1 J. LEPPER

2 document, Mr. Morris.

3 MR. MORRIS: Perhaps if you send
4 it to me, I'll have it. Would you like
5 to send it to me?

6 MR. TOSCA: So that there's no
7 confusion, Ms. Veltri, can you send him
8 the Notice of Claim?

9 MR. MORRIS: Counsel, perhaps you
10 would like to ask him the questions so
11 we can as the law suggests examine the
12 claimant relative to the occurrence and
13 the extent of the injuries.

14 MR. TOSCA: I'm trying to do that
15 except that you're obstructing that
16 ability.

17 MR. MORRIS: Counsel, note my
18 objection; and at this point, let's
19 mark it for a record. Madam Court
20 Reporter, you're taking this all down,
21 correct?

22 I would like to note for the
23 record and ask that the Court make a
24 ruling that counselor has an inability
25 to demonstrate that he is able to use

1 J. LEPPER

2 technology or provide documents in
3 advance of today. Let us mark it for a
4 ruling. I object to your
5 characterization. It seems that you
6 have not learned how to use the
7 computer just like when you came here
8 with a flip phone to examine a
9 hypodermic needle.

10 Counselor, if you would like us to
11 look at a document, provide it to us in
12 advance. The fact that you're saying
13 this is page three when it's page four,
14 it's a misrepresentation.

15 MR. TOSCA: No, it's not a
16 misrepresentation. You can see number
17 three at the top of the page. It's a
18 ten-page Notice of Claim. The first
19 page is a face sheet to the Notice of
20 Claim.

21 Mr. Morris, you are splitting
22 hairs. There's no technical
23 difficulty. You're being an
24 obstructionist. I object to this.
25 We'll continue with the deposition.

1 J. LEPPER

2 MR. MORRIS: Note my objection.
3 Counselor, this is an examination. Not
4 a deposition.

5 MR. TOSCA: Examination Under
6 Oath. Off the record.

7 MR. MORRIS: I just got it now.
8 Let's just go off the record just a
9 moment so I can talk to my client.

10 MR. TOSCA: Okay.

11 (Whereupon, an off-the-record
12 discussion was held.)

13 MR. MORRIS: I just handed the
14 document to my client. Appears to be
15 eleven pages. The first page dated
16 looks like March 12th, 2020. It
17 appears to have a Village of Babylon
18 letterhead on it. There's no Bates
19 stamp numbers or any identification
20 other than that.

21 MR. TOSCA: Are we ready?

22 MR. MORRIS: I am ready.

23 Q. Mr. Lepper, now you have a hard
24 copy of a document that's been marked
25 Exhibit A for today; but you looked through

1 J. LEPPER

2 the document?

3 A. Yes. You're breaking up. Yes. I
4 could see it. My glasses are fogging up,
5 but I could see it.

6 Q. Do you recognize the document?

7 A. Yes.

8 Q. What do you recognize that
9 document to be?

10 A. Notice of Claim.

11 Q. Is this a Notice of Claim that you
12 filed with the village?

13 A. Can you repeat that? You're
14 breaking up.

15 Q. Is this a Notice of Claim that you
16 filed with the village?

17 MR. MORRIS: Note my objection.
18 You can answer.

19 A. Yes.

20 Q. Did you personally serve that
21 Notice of Claim upon the village?

22 MR. MORRIS: Note my objection.

23 A. Yes. It says it right there on
24 page two. Lower right-hand corner.

25 Q. Do you remember the date that you

1 J. LEPPER

2 did that?

3 A. It says it right there on page
4 two, lower right-hand corner.

5 Q. What date is that, sir?

6 MR. MORRIS: Note my objection.

7 A. March 12th.

8 Q. If we could turn now to the page
9 enumerated number two at the top of the
10 third page of that exhibit, do you see that?

11 A. Page three, number two?

12 Q. Correct.

13 A. Notice of Claim.

14 Q. Now --

15 A. I'm sorry, I didn't hear you.

16 Q. Yes. If we could look at the
17 address that's provided there for you, was
18 that your address at the time the Notice of
19 Claim was served?

20 MR. MORRIS: Note my objection.

21 Don't answer. We've been through this
22 counsel. Move on.

23 Q. Do you see where it says nature of
24 claim, number two of that page, Mr. Lepper?

25 A. Yes.

1 J. LEPPER

2 Q. And there are claims that you are
3 asserting, you are asserting against the
4 village that are noted there. Are you able
5 to read that in front of you?

6 MR. MORRIS: Note my objection.
7 Move to strike everything before can
8 you read that in front of you.

9 MR. TOSCA: Is he answering the
10 question?

11 MR. MORRIS: Counsel, I suggest
12 you move on. Start asking questions
13 about the claim, not the Notice of
14 Claim filed by counsel.

15 MR. TOSCA: I'm going to ask him
16 what I am going to ask him.

17 Q. Are you able to read what's under
18 number two, the nature of the claim?

19 A. Yes. When my glasses aren't
20 fogging, yes.

21 Q. Are those the claims you are
22 asserting against the Village of Babylon and
23 the other respondents named in the Notice of
24 Claim?

25 A. Yes.

1 J. LEPPER

2 Q. Go to the next page that's
3 enumerated number three at the top of the
4 page. Are you able to read that page?

5 A. Yes.

6 Q. Do you see where it says time
7 when, place where, and manner in which the
8 claim arose?

9 MR. MORRIS: Note for the record
10 that counsel's microphone is breaking
11 up.

12 Q. Did you hear the question,
13 Mr. Lepper?

14 A. Can you repeat it?

15 Q. Yes.

16 Do you see number three of the
17 Notice of Claim where it says the time when,
18 place where, the manner in which the claim
19 arose; do you see that?

20 MR. MORRIS: Note my objection.
21 You're referring to the document that
22 you've marked, correct, counsel?

23 MR. TOSCA: Correct.

24 A. Yes.

25 Q. I would ask you to look through

1 J. LEPPER

2 the pages of the Notice of Claim turning to
3 three, four, five, six, seven, up through
4 number four.

5 MR. MORRIS: Again, note my
6 objection. When you say three, four,
7 five, six, seven, are you referring
8 to -- again, counsel, let me finish,
9 please -- are you referring to pages
10 four, five, six, seven, eight; or are
11 you referring to page three?

12 MR. TOSCA: Referring to the
13 numbers at the top of each of those
14 pages, typewritten. Let me know when
15 you're done reading, Mr. Lepper.

16 A. How many pages would you like me
17 to read again?

18 Q. I would like you to read the
19 entire section of number three, Notice of
20 Claim, as to time, when, place, where, in
21 the manner in which the claim arose.

22 MR. MORRIS: And note --

23 Q. And the numbers at the top of the
24 pages I'm asking you to look at, the
25 typewritten numbers at the top of each page,

1 J. LEPPER

2 three, four, five, six, seven?

3 MR. MORRIS: Again, note my
4 objection. The reference of this
5 document as the Notice of Claim. This
6 is the document that you've marked,
7 counsel. Mr. Lepper, to the extent
8 he's asking you to read the document in
9 front of you, please go ahead and do
10 that.

11 A. Again, I'm going to turn my camera
12 off and take a few minutes to review it.

13 Q. He's reviewing it during the
14 session. I'm going to ask that he keep the
15 camera on, please.

16 MR. MORRIS: Mr. Lepper, if you
17 could keep your camera on, please,
18 while you read the document.

19 THE WITNESS: I'm going to have to
20 review it in a different location where
21 I can take my mask off because my
22 glasses are fogging up.

23 MR. TOSCA: Tell you what, why
24 don't we take five minutes. Let
25 Mr. Lepper look at the document; and we

1 J. LEPPER

2 can come back, okay?

3 MR. MORRIS: You're asking for
4 five minutes? It's now 11:28 a.m.

5 MR. TOSCA: We'll take five
6 minutes. Mr. Lepper can take the
7 document since he can't read it in
8 front of him; and he can read the
9 entire document, okay?

10 (Whereupon, a short recess was
11 taken.)

12 Q. Mr. Lepper, have you had an
13 opportunity to examine the document and read
14 through?

15 MR. MORRIS: Let me just note for
16 the record it's now 11:42. Again,
17 counsel, you're referring to the
18 document that you've marked as Exhibit
19 A, correct?

20 MR. TOSCA: Correct.

21 Q. Mr. Lepper, I don't think we got
22 an answer.

23 MR. MORRIS: Will you repeat the
24 question, please.

25 Q. Had you had an opportunity to

1 J. LEPPER

2 review Exhibit A today?

3 A. I'm sorry, you broke up. Can you
4 repeat?

5 Q. Did you review Exhibit A?

6 A. I read through quickly.

7 Q. Did you read that document before
8 you served it, before you served the Notice
9 of Claim on the village?

10 MR. MORRIS: Objection. You're
11 asking him did he write Exhibit A, the
12 document that you've just produced
13 today?

14 MR. TOSCA: Correct.

15 MR. MORRIS: Okay. Objection.
16 The characterization calls for a legal
17 conclusion.

18 Q. The Notice of Claim that you
19 served on the village, that Notice of Claim
20 Exhibit A?

21 MR. MORRIS: Again, note my
22 objection.

23 Q. Mr. Lepper, you're pausing. Are
24 you reviewing the document again?

25 MR. MORRIS: Note my objection.

1 J. LEPPER

2 A. Was there a question?

3 Q. Yes. I said you were pausing.

4 Are you reviewing the document again?

5 MR. MORRIS: Note my objection.

6 Strike everything before are you

7 reviewing the document again.

8 A. No. I was waiting for a question.

9 Q. I asked you the Notice of Claim
10 that you served on the village, is that the
11 same document that's in front of you as part
12 of Exhibit A?

13 MR. MORRIS: Note my objection.

14 A. I'm not sure. I just received
15 Exhibit A.

16 Q. Okay.

17 Well, did you get a chance to look
18 at Exhibit A?

19 MR. MORRIS: Note my objection.

20 Asked and answered. Counsel, it's now
21 11:45. I suggest you start --

22 Q. Mr. Lepper, did you look --

23 MR. MORRIS: Please let me finish.

24 Note for the record --

25 MR. TOSCA: You're obstructing the

1 J. LEPPER

2 deposition.

3 MR. MORRIS: Counsel, you're
4 speaking over me; and I have given you
5 every courtesy.

6 MR. TOSCA: No, you have not.

7 MR. MORRIS: You're speaking over
8 me. Let me know when you are finished,
9 sir.

10 MR. MORRIS: You have not given me
11 any courtesy. You're obstructing the
12 50-h hearing. I'm done.

13 MR. MORRIS: You're done? Again,
14 note my objection. Counsel, this is
15 not a deposition. No matter how much
16 you would like it it be, it is not a
17 deposition. It is an examination under
18 General Municipal Law Section 50-h. I
19 suggest you get started.

20 MR. TOSCA: Are you not letting
21 him answer the last question?

22 MR. MORRIS: What is the last
23 question? You're asking him about the
24 document.

25 MR. TOSCA: Read back the

1 J. LEPPER

2 question, please.

3 (Whereupon, the referred to
4 question was read back by the
5 reporter.)

6 MR. MORRIS: Go ahead and answer
7 the question, Mr. Lepper. I don't
8 understand what the confusion is here.

9 A. I read through it just now as it
10 was handed to me.

11 Q. Is that a copy of the Notice of
12 Claim that you served on the village?

13 MR. MORRIS: Again, note my
14 objection.

15 Q. Please answer the question,
16 Mr. Lepper.

17 A. I have a copy of Exhibit A in
18 front of me. I don't have a copy of what
19 was submitted to the village in front of me.

20 Q. So you don't know?

21 MR. MORRIS: Objection. He
22 testified. Move on.

23 Q. Is your answer you don't know?

24 MR. MORRIS: Objection. The
25 testimony speaks for itself. Counsel,

1 J. LEPPER

2 move on.

3 Q. Mr. Lepper, are you claiming
4 emotional injuries from this claim?

5 A. Yes.

6 MR. MORRIS: Counsel, are you done
7 with the document? Would you like the
8 witness to continue to refer to it, or
9 can he place it aside?

10 MR. TOSCA: No. I am not done
11 with the document. He can place it
12 aside if he so chooses. I'm not done
13 with it by any means. You are impeding
14 my ability to ask him questions about
15 it.

16 MR. MORRIS: Mr. Lepper, please
17 put the document aside. Thank you.

18 Q. Mr. Lepper, are you claiming
19 emotional injuries due to the claim?

20 A. Yes.

21 Q. What are the emotional injuries
22 that you're claiming?

23 A. Can you repeat the question?

24 MR. TOSCA: Repeat the question,
25 Ms. Reporter, for the witness.

1 J. LEPPER

2 (Whereupon, the referred to
3 question was read back by the
4 reporter.)

5 A. I believe that the threats of the
6 fines created a lot of stress and emotional
7 stress.

8 Q. Any other emotional injuries?

9 A. I think that's enough.

10 Q. The fines that caused you stress,
11 what fines are they that you're referring
12 to?

13 A. All of them.

14 Q. Will you tell me which ones?

15 MR. MORRIS: Objection.

16 Q. When you say all of them, what are
17 all of them?

18 MR. MORRIS: Objection. You can
19 answer.

20 Q. Mr. Lepper, --

21 A. Yes.

22 Q. -- would you answer the question?

23 A. Can you repeat the question?

24 MR. MORRIS: Note my objection.

25 MR. TOSCA: Will the reporter

1 J. LEPPER

2 please read back the question.

3 (Whereupon, the referred to
4 question was read back by the
5 reporter.)

6 MR. MORRIS: Again, note my
7 objection for the record.

8 A. I believe I answered that question
9 already.

10 Q. How much in fines are we talking
11 about?

12 A. All of the fines and all of the
13 threats of the fines, continued threats of
14 the fines.

15 Q. Let's talk about the fines that
16 were levied. What is the amount of the
17 fines that you received?

18 MR. MORRIS: Note my objection.

19 A. I don't recall.

20 Q. The amount of fines that were
21 received, did they exceed \$1,000?

22 MR. MORRIS: Note my objection.

23 A. Was that a question?

24 Q. I'll have the question repeated
25 for you.

1 J. LEPPER

2 MR. TOSCA: Ms. Reporter, can you
3 read back the question.

4 (Whereupon, the referred to
5 question was read back by the
6 reporter.)

7 A. I don't recall. I know that I was
8 threatened with numerous fines. I know that
9 the fines that were received were already
10 overruled and ordered to be returned. I
11 don't know what that amount was.

12 Q. Have you made any attempt to get
13 the fines refunded?

14 A. I believe that was ordered by the
15 Court.

16 MR. MORRIS: Note my objection and
17 counsel -- note my objection. And
18 counsel, before you ask another
19 question, I don't want to interrupt
20 you.

21 MR. TOSCA: What are you -- you're
22 objecting to the question, right?

23 MR. MORRIS: Before you ask
24 another question, this is a claim
25 pursuant to Section 50-h. You have an

1 J. LEPPER

2 examination of the claimant, quote,
3 relative to the occurrence and extent
4 of the injuries or damages, end quote.

5 MR. TOSCA: Okay.

6 MR. MORRIS: Surely you're not
7 going to allow us to go back three
8 years, right? You're going to allow us
9 to go back 90 days. Otherwise, you'll
10 claim it's time barred, right? That's
11 what the Notice of Claim is; so I
12 suggest you start answering question,
13 again, quote, relative to the
14 occurrence and extent of the injuries
15 or damages, end quote.

16 MR. TOSCA: Your objections are
17 repetitive and improper. I'm going to
18 try to do the best I can here, but
19 you're interrupting every question I
20 ask. Every question I ask is valid.
21 You're simply trying to obstruct the
22 hearing.

23 MR. MORRIS: Counselor --

24 MR. TOSCA: You are making it very
25 difficult.

1 J. LEPPER

2 MR. MORRIS: -- I suggest you seek
3 a ruling if you're going to continue
4 calling me obstructionist and you can't
5 learn how to display a document which
6 you keep calling the Notice of Claim
7 when it's, in fact, Exhibit A in an
8 examination and not a deposition, I
9 suggest you seek a ruling; and we'll
10 give you all the opportunity to do
11 that.

12 MR. TOSCA: Are you done with the
13 insults, Mr. Morris?

14 MR. MORRIS: Again, I object to
15 your characterization. Are you going
16 to start asking questions as the law
17 contemplates?

18 MR. TOSCA: The questions have
19 been as the law contemplates. You're
20 trying to obstruct the law.

21 Q. Mr. Lepper, have you made any
22 attempt at a refund of the fines?

23 A. I think I answered that already.

24 Q. I don't remember the answer. What
25 was your answer?

1 J. LEPPER

2 MR. MORRIS: Note my objection.

3 The record speaks for itself. Counsel,
4 move on.

5 Q. Did you ever appear in village
6 hall with your two children to obtain a
7 refund of any fines that were levied?

8 A. Yes.

9 Q. Do you remember the date you did
10 that?

11 A. No.

12 Q. Do you remember the department you
13 went to to get the -- to try to get the
14 refund?

15 A. Yes.

16 Q. Did you see the mayor during that
17 time?

18 MR. MORRIS: Objection.

19 A. Yes.

20 Q. Did you speak to Ms. Suzanne
21 Schettino at that time?

22 A. I don't recall who I spoke to.

23 Q. Do you recall telling any of your
24 children to ask anyone in the village to
25 have the mayor refund the money that he

1 J. LEPPER

2 stole from them?

3 MR. MORRIS: Note my objection.

4 A. No. I don't recall saying that.

5 Q. Do you recall your daughter asking
6 that question?

7 MR. MORRIS: Note my objection.

8 Counselor, move on.

9 MR. TOSCA: I am moving.

10 Q. Do you recall your daughter asking
11 that question at the village --

12 MR. MORRIS: Madam Court Reporter,
13 can you note on the record the
14 technical difficulties that we're
15 seeing of counsel who's asking the same
16 question over and over again.

17 Again, I'm going to object. We're
18 going to mark it for a ruling. And
19 you're going to move on.

20 Q. Mr. Lepper, do you recall your
21 daughter asking a question of anyone at the
22 village office to the extent that she
23 indicated the mayor stole money from her?

24 MR. MORRIS: Note my objection.

25 Let's mark it for a ruling. Do not

1 J. LEPPER

2 answer. Counsel, please proceed.

3 Q. When you went down to the village
4 hall, was it both your children you went
5 with?

6 MR. MORRIS: Note my objection.
7 Counsel, move on.

8 MR. TOSCA: Are you not allowing
9 him to answer the question?

10 MR. MORRIS: We're going to mark
11 it for a protective orders because it
12 seems that you're more concerned with
13 the children and fines than the claims
14 that assert among other things that
15 police came to my client's house.

16 MR. TOSCA: The fines are not part
17 of --

18 MR. MORRIS: I'm sorry. I was
19 speaking.

20 MR. TOSCA: Go ahead.

21 MR. MORRIS: And that the village
22 attorney made statements about
23 essentially malicious prosecution of my
24 claim. It's outlined in the Notice of
25 Claim that we filed.

1 J. LEPPER

2 To the extent that you want to,
3 again, ask questions pursuant to
4 General Municipal Laws Section 50-h, I
5 suggest you do so.

6 MR. TOSCA: Those questions are
7 being posed.

8 Q. Mr. Lepper, did you get a return
9 of any of the fines that were assessed?

10 A. Can you repeat that?

11 Q. Did you get a return on any of the
12 fines that were assessed and that you paid?

13 MR. MORRIS: Note my objection.

14 A. I don't know.

15 Q. Do you recall ever receiving a
16 check from the village or a refund for any
17 fines that you paid?

18 A. No, I did not.

19 Q. When you went down to village
20 hall, did you receive any money from the
21 village at that time when you had gone down
22 with your children to get a refund of the
23 fines?

24 MR. MORRIS: Note my objection.

25 A. No, I did not.

1 J. LEPPER

2 Q. Did anyone tell you at the village
3 that it would be a refund coming in some
4 way?

5 A. I don't recall.

6 Q. Do you know how many times you
7 went down to the village to ask for a
8 refund?

9 MR. MORRIS: Objection. Madam
10 Court Reporter, can you read that
11 question back, please.

12 (Whereupon, the referred to
13 question was read back by the
14 reporter.)

15 A. Just the one time.

16 Q. In terms of the emotional damages
17 that you're claiming, Mr. Lepper, have you
18 gone for any treatment related to the
19 emotional damages?

20 A. Yes.

21 Q. Did you see a medical doctor?

22 A. I see a therapist.

23 Q. What is the therapist's name?

24 MR. MORRIS: Note my objection.

25 A. Dr. Villina.

1 J. LEPPER

2 Q. Would you please spell it?

3 A. V-I-L-L-I-N-A.

4 Q. Where is Dr. Villina located?

5 A. In the Village of Babylon.

6 Q. When for the first time did you
7 see Dr. Villina?

8 MR. MORRIS: Again, note my
9 objection.

10 A. I don't recall.

11 Q. When was the last time you saw Dr.
12 Villina?

13 MR. MORRIS: Note my objection.

14 A. I still speak to him virtually.

15 MR. MORRIS: Counsel, before you
16 ask another question, again, when are
17 we getting to the occurrence and the
18 extent of injuries of damages here?
19 It's 12:02.

20 MR. TOSCA: Are you going to stop?
21 I need to ask questions, all right?
22 All these questions are related to the
23 claims that you're making.

24 MR. MORRIS: How much longer do
25 you anticipate, counselor?

1 J. LEPPER

2 MR. TOSCA: I don't know; but at
3 this rate, we haven't even begun
4 because you keep objecting. And you
5 keep obstructing the deposition. It's
6 impossible to get this going. I have
7 not been able to ask any questions at
8 this point and get any substantive
9 answers. The point is, if you continue
10 to object, you're making it very
11 difficult to do the 50-h hearing.
12 You're just --

13 MR. MORRIS: Let me know when
14 you're done.

15 MR. TOSCA: I'm done.

16 MR. MORRIS: If you're done, that
17 means you stop speaking. Are you done
18 because I would like to note my
19 objection on the record?

20 Again, you keep on characterizing
21 this and treating this as a deposition
22 when it is not. It is an examination.
23 Again, your characterization is
24 improper. Ask questions that are,
25 quote, relative to the occurrence and

1 J. LEPPER

2 the extent of the injuries or damages,
3 end quote; and if you can't give us a
4 time here, let me know because believe
5 it or not, this is not going to be an
6 all day thing. So ask your questions,
7 and please let us move on.

8 MR. TOSCA: Is your objection over
9 with?

10 MR. MORRIS: Counsel, I'm
11 finished.

12 MR. TOSCA: Okay. I intend to ask
13 questions, and we'll ask all questions
14 necessary to affect the 50-h hearing.
15 You're obstructing that.

16 MR. MORRIS: Again, note my
17 objection. Why don't we seek a ruling?
18 To the extent that you consider this
19 obstruction, counsel, why don't you
20 seek a ruling here? I don't like this
21 characterization.

22 MR. TOSCA: Mr. Morris, this claim
23 is not in court; so there are remedies
24 available by law for an obstructive
25 50-h hearing. Since this is an

1 J. LEPPER

2 Examination Under Oath. You can
3 rightfully call it a deposition as
4 well. The point is, is that I would
5 like to continue; so you've made your
6 objection, and that's that.

7 Q. Mr. Lepper, you said you're still
8 seeing Dr. Villina virtually. When was the
9 last time you spoke to Dr. Villina
10 virtually?

11 MR. MORRIS: Objection.

12 A. I don't recall.

13 Q. Was it within the last month?

14 MR. MORRIS: Note my objection.

15 Q. Is there any frequency that you
16 speak to Dr. Villina?

17 A. Yes.

18 Q. What is the frequency with which
19 you speak to him?

20 A. It would depend on his
21 availability and my availability, pretty
22 regularly. Typically weekly.

23 Q. Is Dr. Villina part of a practice?

24 A. Say it again.

25 Q. Is Dr. Villina a part of a

1 J. LEPPER

2 practice?

3 A. I believe he's the owner of the
4 practice.

5 Q. Is there a name to that practice?

6 A. I don't know.

7 Q. Did you see him for the first time
8 more than a year ago?

9 MR. MORRIS: Note my objection.
10 Don't answer. Move on.

11 Q. Did you see Dr. Villina more than
12 90 days ago?

13 MR. MORRIS: Note my objection.
14 Do not answer. Move on.

15 Q. Did you see Dr. Villina in the
16 last three months?

17 MR. MORRIS: Note my objection.
18 Move on, counsel.

19 Q. Did you see Dr. Villina in his
20 office at any time?

21 MR. MORRIS: Note my objection.

22 Q. Mr. Lepper, --

23 A. Yes.

24 Q. -- when was the last time you saw
25 Dr. Villina in his office?

1 J. LEPPER

2 MR. MORRIS: Note my objection.

3 Asked and answered. Counsel, move on;
4 or we'll mark it for a protective
5 order.

6 Q. Mr. Lepper, when was the last time
7 you saw Dr. Villina in his office?

8 MR. MORRIS: Counsel, perhaps you
9 don't understand when I say move on and
10 we'll mark it for protective order.
11 Don't answer. Note our objection.
12 We'll mark it for a ruling. Please
13 move on.

14 MR. TOSCA: Your objection is
15 noted.

16 Q. When was the first time you saw
17 Dr. Villina in his office?

18 MR. MORRIS: Note my objection.
19 We're moving for a protective order on
20 this subject topic. Counsel, please
21 move on.

22 Q. Aside from Dr. Villina, have you
23 seen any other therapists, medical
24 providers, specialists in reference to the
25 claimed emotional injuries?

1 J. LEPPER

2 A. I don't recall.

3 Q. You said Dr. Villina was a
4 therapist. Does he have any degrees to your
5 knowledge?

6 MR. MORRIS: Note my objection.
7 Strike everything before you said Dr.
8 Villina was a therapist. You can
9 answer.

10 A. I don't know.

11 Q. To your knowledge, does he have
12 any licenses?

13 A. I don't know.

14 Q. Has the stress that you testified
15 to regarding the fines or the threatened
16 fines caused you any inability to function
17 in your daily life?

18 A. At times, yes.

19 Q. In what ways?

20 A. Well, the constant threat of fines
21 was pretty heavy weight to carry in my
22 house.

23 Q. How did that disable you in any
24 way?

25 MR. MORRIS: Objection. You can

1 J. LEPPER

2 answer.

3 A. Well, losing focus on what I
4 needed to focus on and focusing on the
5 threats issued by the village.

6 Q. What is it that you need to focus
7 on that you're not able to?

8 A. Normal everyday life.

9 Q. Like?

10 A. Normal everyday life.

11 Q. Could you give us an example?

12 MR. MORRIS: Note my objection.

13 Q. The answer was no?

14 MR. MORRIS: Again, note my
15 objection.

16 MR. TOSCA: Are you letting him
17 answer?

18 MR. MORRIS: Counsel, I said note
19 my objection.

20 MR. TOSCA: Okay.

21 Q. So, Mr. Lepper, then, can you tell
22 us any examples of what it is that you're
23 disabled from doing in your daily life?

24 MR. MORRIS: Note my objection.

25 A. Anything that takes away from it.

1 J. LEPPER

2 Q. Like what?

3 A. Anything that takes away --

4 MR. MORRIS: Note my objection.

5 A. -- from my job or my family due to
6 threats from the village is emotional.

7 Q. What is it about your job that you
8 can't do because of the threats?

9 A. Can you repeat that? I lost you
10 again.

11 Q. Sure.

12 MR. TOSCA: Ms. Reporter, can you
13 read back the question.

14 (Whereupon, the referred to
15 question was read back by the
16 reporter.)

17 A. Any focus that takes away from my
18 daily life due to threats by the village
19 affects me.

20 Q. How does it affect your job?

21 A. Because without the threats, I
22 wouldn't have to think about them.

23 MR. MORRIS: Note my objection.

24 Q. What is it about your job that you
25 cannot do or cannot do well because of the

1 J. LEPPER

2 threats?

3 A. Well, if I'm thinking about the
4 threats and the effects that it's having on
5 myself and my family, then I'm not thinking
6 about what I'm doing at work; am I? If the
7 threats were not present, I wouldn't be
8 thinking about them; would I?

9 Q. What is it in your job that you
10 have a problem doing because of the things
11 you're thinking about the threats?

12 MR. MORRIS: Note my objection.

13 A. Whatever it is that I'm doing,
14 Ms. Tosca, when I'm thinking about the
15 threats and the affects of my family.
16 That's it.

17 Q. Can you give us any specific
18 examples of what you did at work, you have a
19 problem doing because of the thinking about
20 these threats?

21 MR. MORRIS: Note my objection.

22 Mr. Lepper, please answer; and,
23 counsel, move on.

24 A. I think I just did that.

25 Q. What is it about your home life

1 J. LEPPER

2 that you have any problems with in terms of
3 thinking about these fines?

4 A. I think I just gave you an
5 explanation in the last question.

6 Q. I'm asking, that was about your
7 job. I'm asking about your home life now.

8 MR. MORRIS: Objection.

9 A. I'll give you the same answer.

10 MR. MORRIS: Note my objection.

11 A. And you can have the same answer.

12 Q. The same answer so the -- give me
13 a specific example of what you're not able
14 to do or not performing well in terms of
15 your home life as opposed to to your job
16 life?

17 MR. MORRIS: Note my objection.

18 A. Like I said before, any time I'm
19 thinking about threats from the village,
20 focusing on threats from the village, it's
21 taking away anything in my normal life when
22 I wouldn't need to focus on threats from the
23 village.

24 Q. I understand that. I'm asking for
25 specific examples, Mr. Lepper. Can you give

1 J. LEPPER

2 us a specific example?

3 MR. MORRIS: Note my objection.

4 Asked and answered. Counsel, move on.

5 MR. TOSCA: You're not allowing
6 him to answer?

7 MR. MORRIS: Counsel, I'm not
8 allowing you to harass him with the
9 same question over and over again.

10 MR. TOSCA: I would like to get an
11 answer.

12 A. That was my answer.

13 Q. Aside from emotional problems,
14 have you any other damages that you're
15 seeking with regard to the claim in the
16 Notice of Claim?

17 MR. MORRIS: Note my objection.

18 A. Can you rephrase the question?

19 Q. Sure.

20 Aside from the emotional damage,
21 are you making any claim for any other
22 damages related to the Notice of Claim?

23 A. You're going to have to be more
24 specific. You have the exhibit in front of
25 you.

1 J. LEPPER

2 Q. Are you making any claim for
3 attorney's fees?

4 MR. MORRIS: Note my objection.

5 You may answer.

6 A. Yes, I am.

7 Q. Have you expended any money in
8 attorney's fees related to the Notice of
9 Claim?

10 MR. MORRIS: Note my objection.
11 We're going to assert attorney/client
12 privilege. Do not answer.

13 MR. TOSCA: It's a claim you're
14 making.

15 MR. MORRIS: Counsel, where is
16 your confusion?

17 MR. TOSCA: We have --

18 MR. MORRIS: Please let me finish.

19 MR. TOSCA: You asked me where is
20 your confusion. That was the question,
21 and I just answered it. You asked a
22 question, and I gave you an answer.
23 When you ask me where is your
24 confusion, I answered that, okay? If
25 you don't want an answer, then don't

1 J. LEPPER

2 ask the question.

3 MR. MORRIS: Counselor, the rest
4 of the question before I was
5 interrupted was where is your confusion
6 to the assertion of a privilege; so
7 that little part where you interjected
8 and interrupted me and didn't allow me
9 to speak, where is your confusion to
10 the assertion of a privilege? Okay.
11 Now I'm done. If you want an answer to
12 that, let me know.

13 MR. TOSCA: Say that again. If
14 you want --

15 MR. MORRIS: If you would like to
16 answer that question, I am done asking
17 the question; so, please, I invite the
18 opportunity to hear what you think.

19 MR. TOSCA: I am not confused by
20 the attorney/client privilege. I'm
21 confused by an objection that is
22 totally improper for a claim that's
23 being asserted by Mr. Lepper. So --

24 MR. MORRIS: I'm sorry you're
25 confused.

1 J. LEPPER

2 MR. TOSCA: I'm not done yet. If
3 you're making the claim, you can't then
4 say, "Well, it's privileged so you
5 can't have the information as to the
6 damages."

7 MR. MORRIS: I'm sorry you're
8 confused --

9 MR. TOSCA: If you're not letting
10 him answer the question, that's fine.
11 I'll move on, Mr. Morris.

12 MR. MORRIS: Madam Court Reporter,
13 did you get down what I said earlier?
14 Let the record reflect there seems to
15 be technical difficulties on the behalf
16 of Mr. Tosca.

17 MR. TOSCA: There's no technical
18 difficulty.

19 Q. Mr. Lepper, if you spent any money
20 out of pocket related to the damages that
21 you're asserting in the Notice of Claim?

22 MR. MORRIS: Note my objection.
23 Attorney/client privilege. Counsel,
24 please move on.

25 Q. The answer is either yes or no?

1 J. LEPPER

2 MR. MORRIS: Perhaps, again,
3 you're confused about the assertion to
4 a privilege, counsel. Please move on.

5 Q. The damages that you're seeking,
6 are they monetary?

7 A. I'm sorry, you broke up. Can you
8 repeat that?

9 MR. TOSCA: Can you repeat that,
10 Ms. Reporter.

11 (Whereupon, the referred to
12 question was read back by the
13 reporter.)

14 A. Yes.

15 Q. How much money have you spent out
16 of pocket in total related to the claims in
17 the Notice of Claim?

18 MR. MORRIS: Note my objection.

19 A. I don't recall. Whatever I was
20 found guilty of with the fines that was
21 overturned and loss of pay from work.

22 Q. How much in pay did you lose
23 related to the claims in the Notice of
24 Claim?

25 A. I lost vacation after the Notice

1 J. LEPPER

2 of Claim was put in through the fire
3 department. I had to go down and represent
4 myself.

5 Q. Is it one day you're claiming, one
6 day lost pay?

7 MR. MORRIS: Objection.

8 A. No.

9 Q. How many days are you claiming
10 that you lost relating to this claim?

11 MR. MORRIS: Note my objection.

12 A. There was a few.

13 Q. More than five?

14 A. Yes.

15 Q. More than ten?

16 A. I don't recall.

17 MR. MORRIS: Note my objection.

18 Q. Do you have any record of all the
19 time you've lost from work related to this
20 claim?

21 A. I'm not sure.

22 Q. You said you had to take a day's
23 vacation for an anonymous complaint. When
24 was that?

25 MR. MORRIS: Note my objection.

1 J. LEPPER

2 Move to strike everything before when
3 was that.

4 Q. Mr. Lepper, did you hear the
5 question?

6 A. I did. I don't recall.

7 Q. How much money is one day's
8 vacation day amount to?

9 MR. MORRIS: Note my objection.

10 Q. I didn't hear the answer. Could
11 you repeat the answer, Mr. Lepper?

12 A. I don't know.

13 Q. What was the substance -- I did
14 get it now. What was the substance of the
15 anonymous claim that was made to the fire
16 department?

17 MR. MORRIS: Note my objection.

18 A. An anonymous claim was sent to the
19 commissioner of the fire department stating
20 that I went to the village court with the
21 intention of swaying the Court's decision by
22 wearing a partial uniform when, in fact, I
23 asked the village for an adjournment on
24 August 14th, which I was denied; and I had
25 to leave a friend, a colleague, who passed

1 J. LEPPER

2 away from 9/11 related injuries and had to
3 go to a memorial ceremony in Manhattan,
4 which I had to leave -- and the anonymous
5 claims were overturned, which must have come
6 from the village because only the people in
7 the courtroom knew that I showed up right
8 from a memorial service in my partial Class
9 A uniform.

10 Q. What was the date that you went to
11 court in your partial uniform?

12 A. August 14th, 2018.

13 Q. When you had gone that day, did
14 you appear in a courtroom?

15 A. I did.

16 Q. Was that at village hall?

17 A. It was.

18 Q. At that time, how many people were
19 in the room when you entered the room?

20 MR. MORRIS: Objection.

21 A. The courthouse was full with
22 neighbors and supporters of the tree house.

23 Q. Did you alert them that you were
24 coming that day to appear in court?

25 MR. MORRIS: Note my objection.

1 J. LEPPER

2 Counsel, are you referring to something
3 in 2018?

4 MR. TOSCA: I am. We're talking
5 about the day he went to court.

6 MR. MORRIS: Note my objection.
7 And let me repeat the law for you
8 again. Section 50-h, Subsection 1,
9 quote, relative to the occurrence and
10 extent of the injuries for damages, end
11 quote.

12 MR. TOSCA: You're only delaying
13 this --

14 MR. MORRIS: I suggest you start
15 asking questions about -- I'm only
16 delaying this? Is that your response
17 to requesting questions about 2018?

18 MR. TOSCA: My response is that
19 your objections and your constant
20 reading of the statute, I'm well aware
21 of. I fear that you don't know what a
22 50-h hearing is; but the point is, that
23 you're delaying this process with your
24 constant objections, repetitive remarks
25 that are impeding my ability to conduct

1 J. LEPPER

2 this 50-h hearing.

3 MR. MORRIS: Note my objection.
4 Counsel, how much do you have left? So
5 let me make arrangements for the rest
6 of the day? It's now 12:27.

7 MR. TOSCA: If this continues, the
8 rest of the day.

9 MR. MORRIS: Why don't we take
10 lunch then if that's the case?

11 MR. TOSCA: If you wish to take
12 lunch, you may. How long do you need
13 for lunch, Mr. Morris?

14 MR. MORRIS: We'll probably take
15 an hour to an hour and a half. I mean,
16 do you know how much time you have
17 left?

18 MR. TOSCA: I don't know. At this
19 rate, I can't even forecast because
20 number one, you're constantly
21 objecting; and there are some pauses in
22 your client's responses, which is fine.
23 I expect him to deliberate on his
24 answers; but the point is, is that it's
25 further delaying the process.

1 J. LEPPER

2 MR. MORRIS: I object to your
3 characterizations. Counsel, do you
4 want to give us an approximate time; or
5 are you just going to take all the
6 village's money today in taking an
7 entire day for a 50-h?

8 MR. TOSCA: I'm not going to grace
9 that with a response. I'm telling you
10 that I'm going to be able -- I want to
11 do a deposition. If you continue to
12 obstruct, we're not going to get done.
13 If you continue to obstruct, we're just
14 not going to get done.

15 MR. MORRIS: Note my objection to
16 your characterization.

17 MR. TOSCA: We could have been
18 well on the way.

19 MR. MORRIS: Counsel, can you give
20 me an approximation? No, I can't. Not
21 with your constant objections. No, I
22 cannot. So we'll go for the rest of
23 the day and see where it leads us,
24 okay? If you want to take an hour for
25 lunch, fine. Let's takes an hour for

1 J. LEPPER

2 lunch. It's up to you, Mr. Morris.

3 MR. MORRIS: Mr. Lepper, how
4 much -- I didn't realize we would be
5 here at this point. I mean, how much
6 time do you want to go? Do you want to
7 wait 30 minutes? You tell me.

8 THE WITNESS: You know, I'm
9 getting a little hungry. I could eat.

10 MR. MORRIS: You tell me. Do you
11 want to break now?

12 THE WITNESS: Sure.

13 MR. MORRIS: Okay. Time now is
14 12:29.

15 MR. TOSCA: I don't want to
16 interrupt you, Mr. Morris. Are you
17 done?

18 MR. MORRIS: I'm done.

19 MR. TOSCA: Okay. So we'll take
20 an hour. An hour and a half I think is
21 a little much.

22 MR. MORRIS: We'll take an hour.

23 MR. TOSCA: Great.

24 MR. MORRIS: 12:30 now. We'll see
25 you at 1:30.

1 J. LEPPER

2 MR. TOSCA: Thank you.

3 (Whereupon, a short recess was
4 taken.)

5 MR. TOSCA: Can you read back the
6 last question.

7 (Whereupon, the referred to
8 question was read back by the
9 reporter.)

10 Q. Did you alert your friends and
11 neighbors that you were going to court that
12 day?

13 MR. MORRIS: Note my objection.
14 Again, counselor, are you referring to
15 events of 2018?

16 MR. TOSCA: Again, yes.

17 MR. MORRIS: I don't want to keep
18 marking it for a ruling, but I'm just
19 going to again reserve my right. I'm
20 going to say mark it for a ruling. If
21 you can, anything in 2018 --

22 MR. MORRIS: I'll tell you what,
23 why don't you just object? You're not
24 going to let your client answer, then
25 just tell him not to answer. I'll move

1 J. LEPPER

2 on; but I would note that, you know,
3 any objections you make and any
4 direction you're telling your witness
5 not to answer obstructs this hearing.
6 But I would like to get it done.

7 MR. MORRIS: Again, note my
8 objection to the use of obstruction;
9 and let me repeat the law, General
10 Municipal Law Section 50-h. You can
11 demand, quote, an examination of the
12 claimant relative to the occurrence and
13 extent of the injuries or damages, end
14 quote.

15 Counsel, tell me, are you going to
16 allow us to bring claims from 2018 and
17 2019 pursuant to this 2020 Notice of
18 Claim?

19 MR. TOSCA: Your witness mentioned
20 this incident. I'm asking about it.

21 MR. MORRIS: Counsel, again, are
22 you going to allow us to bring in
23 claims from 2018 and --

24 MR. TOSCA: I will object to
25 anything that you request that's beyond

1 J. LEPPER

2 the parameters of the law. I don't
3 have to tell you what the law is.

4 MR. MORRIS: I'm glad that we
5 agree on something because -- to the
6 extent you're going to ask things, we
7 agree on the extent that you're going
8 to ask things from 2018 and 2019.
9 We're going to object, and we're going
10 to mark it for a ruling; and I'm just
11 going to proceed in that manner for the
12 duration now that it's 1:30 in the
13 afternoon of this 50-h.

14 MR. TOSCA: You're objecting and
15 you're telling him not to answer
16 because there are times where you
17 object and you have him answer. So
18 just clarify when you want your witness
19 not to answer the question. We
20 reserve our right to your not allowing
21 the 50-h to go.

22 If you are going to object,
23 object. If you're telling your witness
24 not to answer the question, then follow
25 with that also. There are times when

1 J. LEPPER

2 you are objecting where you're allowing
3 the witness to answer, so we need to be
4 perfectly clear as to what you're
5 directing your witness to do.

6 If you're objecting and telling
7 him not to answer, so be it. We will
8 contest these objections because they
9 are not allowing us to proceed with a
10 50-h hearing as allowed by law.

11 MR. MORRIS: Counsel, are you
12 done? I don't want to interrupt you.

13 MR. TOSCA: I'm done.

14 MR. MORRIS: Counsel, if you're
15 not allowing us to bring in claims from
16 2018 and 2019, all right, we're going
17 the say it's beyond the scope of the
18 examination under General Municipal Law
19 Section 50-h; so to the extent that
20 you're going to continue to ask about
21 events in 2018, we're going to object
22 and we're going to mark it for a
23 ruling. And, yes, I'm not going to
24 have him answer questions about 2018 or
25 2019.

1 J. LEPPER

2 MR. TOSCA: Just note for the
3 record that he made this part of the
4 claim as he's testifying. Whether it's
5 legitimate or not is another question.
6 He's saying this is a claim. Since he
7 brought it up, I'm allowed inquiry.

8 MR. MORRIS: Counsel, I'm sorry.
9 I signed the Notice of Claim. That's
10 me. What's the confusion here now?

11 MR. TOSCA: I'm telling you what
12 he testified to before. You heard him
13 testify. I'm entitled to probe. I
14 don't really think this discussion is
15 going anywhere, and I think it's quite
16 honestly delaying the 50-h hearing.

17 MR. MORRIS: Note an objection to
18 that. Counsel, proceed. Ask questions
19 again as Municipal Law Section 50-h
20 requires.

21 MR. TOSCA: I've been doing that;
22 and it's been a problem because you've
23 been, you know, blocking very
24 legitimate questions. Again, if you're
25 not going to have your witness answer,

1 J. LEPPER

2 please say that on the record.

3 MR. TOSCA: Counsel, it's 1:35.
4 When do you plan on moving forward and
5 asking questions within the 90-day
6 period in which the claim was filed?

7 MR. TOSCA: I'm absolutely trying
8 to. You're making that impossible.

9 MR. MORRIS: 2018 is not within
10 that time frame; is it not?

11 MR. TOSCA: I don't know what your
12 client's claims are. He's here to tell
13 us what they are. He's here to tell us
14 what his damages are, what he feels
15 he's entitled to. That's what we're
16 here for, so I'm getting that; and he
17 tells me that there's an incident where
18 somebody complained about his uniform.
19 So I want to inquire, and that's what
20 I'm doing.

21 Again, are you not allowing him to
22 answer the last question, yes or no?

23 MR. MORRIS: I already placed the
24 objections on the record.

25 MR. TOSCA: Well, I don't know.

1 J. LEPPER

2 Are you telling him not to answer?

3 MR. MORRIS: Counsel, we already
4 placed --

5 MR. TOSCA: I'll repeat the
6 question.

7 Q. Did you tell your friends and
8 neighbors about the hearing in court?

9 MR. MORRIS: Objection.

10 A. I posted a sign about the hearing.

11 Q. Okay.

12 Where did you post that sign?

13 A. I don't recall.

14 Q. How many people attended that
15 you've notified about this hearing?

16 MR. MORRIS: Objection. What
17 hearing, what time frame? Was there
18 only one hearing, counselor?

19 MR. TOSCA: There's only the one
20 he spoke about.

21 MR. MORRIS: If it's in 2018, mark
22 it for a ruling. Move on.

23 Q. When you appeared on that date,
24 what were you coming to court to do at the
25 time you wore your partial uniform?

1 J. LEPPER

2 MR. MORRIS: Note my objection.

3 Mark it for a ruling. Please move on.

4 Q. Did you in reference to your
5 emotional damages claims, have you taken any
6 medications related to those claims?

7 A. No.

8 Q. Have you been prescribed any
9 medications related to those claims?

10 A. No.

11 Q. Other than counseling, has there
12 been any therapy that you've undergone
13 related to the emotional damages claims?

14 A. No, just therapy.

15 Q. Have you had any physical injury
16 related to any of the claims you made in the
17 Notice of Claim?

18 A. Physical injury?

19 Q. Yes.

20 A. No.

21 Q. Had you received tickets in
22 reference to the tree house that's the
23 subject of this claim?

24 MR. MORRIS: Objection. When,
25 counsel?

1 J. LEPPER

2 MR. TOSCA: At any time.

3 MR. MORRIS: Objection. Provided
4 that it is within the Notice of Claim
5 and under General Municipal Law Section
6 50-h for which we are here, I'll allow
7 him to answer. If not, I'm going to
8 mark it for a ruling, counsel.
9 Counsel?

10 MR. TOSCA: I'm waiting for the
11 answer.

12 A. Can you repeat the question?

13 MR. TOSCA: Madam Reporter, please
14 read it back.

15 (Whereupon, the referred to
16 question was read back by the
17 reporter.)

18 MR. MORRIS: Note my objection.
19 Counsel, do you want to clarify the
20 question so we can ask him an
21 appropriate question?

22 MR. TOSCA: I've asked him the
23 question. Are you not allowing him to
24 answer?

25 MR. MORRIS: I'm asking for a time

1 J. LEPPER

2 frame.

3 MR. TOSCA: I'm not giving you
4 one. I want to know if he received any
5 tickets period. We'll go on with the
6 time frame once he gives me an answer.

7 MR. MORRIS: Okay. Go on with the
8 time frame. Mark it for a ruling.

9 MR. TOSCA: You're not allowing
10 him to answer that question?

11 MR. MORRIS: What's your confusion
12 as to mark it for a ruling, counsel?

13 MR. TOSCA: Mark it for a ruling
14 could be you're putting an objection on
15 the record, and he should answer the
16 question; so I'm going to ask you to
17 let me know -- let the reporter know
18 which questions you're allowing him to
19 answer and which ones you aren't.

20 Does mark it for a ruling mean
21 you're directing him not to answer the
22 question, Mr. Morris?

23 MR. MORRIS: As it's now 1:41, I
24 suggest you move on.

25 MR. TOSCA: You're not telling us

1 J. LEPPER

2 whether you're allowing him to answer
3 or not allowing him.

4 MR. MORRIS: Counsel, I've made a
5 statement -- I'm sorry, can we note for
6 the record that counsel's Internet
7 connection is choppy.

8 MR. TOSCA: We can't note that for
9 the record. My Internet connection is
10 fine.

11 MR. MORRIS: Can you please repeat
12 what was said just before that
13 statement.

14 (Whereupon, the referred to
15 colloquy was read back by the
16 reporter.)

17 MR. MORRIS: Counsel, again,
18 anything outside of the scope of this
19 examination we are going to ask for a
20 ruling. To the extent you continue to
21 do so, I'm not going to explain this
22 again. He's not going to answer.
23 We're going to mark it for a ruling.
24 Is there anything confusing or that you
25 don't understand?

1 J. LEPPER

2 MR. TOSCA: I think I quite
3 understand what's happening; and we'll
4 take this up at the appropriate time,
5 all right?

6 Q. At any rate, Mr. Lepper, when did
7 you first start construction on the tree
8 house?

9 MR. MORRIS: Objection. Mark it
10 for a ruling. Please continue.

11 Q. Mr. Lepper, where is the tree
12 house that is the subject of your Notice of
13 Claim?

14 MR. MORRIS: Objection. It's
15 malicious prosecution that's the
16 subject of the Notice of Claim.

17 Q. Mr. Lepper, are you claiming that
18 there was a tree house that you built for
19 which you received?

20 A. Repeat the question.

21 MR. TOSCA: Madam Reporter, can
22 you repeat the question back for the
23 witness.

24 (Whereupon, the referred to
25 question was read back by the

1 J. LEPPER

2 reporter.)

3 A. In which I received what?

4 Q. Tickets.

5 A. Summonses?

6 Q. Yes.

7 A. Yes.

8 Q. Where is that tree house located?

9 A. 59 Cockonoe Avenue, Babylon, New
10 York.

11 Q. Is the tree house completed?

12 A. No.

13 MR. MORRIS: Objection.

14 Q. Is there any work left to be done
15 on the tree house?

16 MR. MORRIS: Note my objection.

17 You can answer again.

18 A. Yes.

19 Q. What work needs to be done on the
20 tree house?

21 A. I think we went over that in the
22 deposition prior to today's examination;
23 didn't we?

24 Q. We're here for a 50-h hearing
25 related to the claims that you made, so I'm

1 J. LEPPER

2 asking you to answer the question related to
3 the claims you're making.

4 A. I answered that question.

5 MR. MORRIS: Repeat the -- note my
6 objection. You don't need to repeat
7 the question because I think Mr. Lepper
8 said it quite well. You've already
9 answered that, and this is not a
10 deposition. Counsel, move on.

11 MR. TOSCA: You're making this
12 impossible. This is, you know, you're
13 obstructing a 50-h hearing without any
14 basis.

15 MR. MORRIS: Counsel, it's now
16 1:36 p.m. I suggest you move on.

17 Q. When was the last time you
18 performed any work on the tree house?

19 MR. MORRIS: Note my objection.
20 Don't answer the question. Mark it for
21 a ruling.

22 Q. Is the tree house still up?

23 A. Yes.

24 Q. When was the last time you were in
25 the tree house?

1 J. LEPPER

2 MR. MORRIS: Note my objection.

3 Do not answer. Mark it for a ruling.

4 Q. When was the last time you saw the
5 tree house?

6 MR. MORRIS: Note my objection.

7 Mark it for a ruling. Counsel, move
8 on.

9 Q. Has anyone made use of the tree
10 house in the last year?

11 MR. MORRIS: Counsel, move on.

12 Mark it for a ruling.

13 Q. When was the last time you
14 received any summonses related to the tree
15 house?

16 MR. MORRIS: Objection. Asked and
17 answered. We'll mark it for a ruling.
18 He's not answering again.

19 Q. When was the first time you
20 received any summonses related to the tree
21 house?

22 MR. MORRIS: Objection. Mark it
23 for a ruling.

24 Q. You have a Notice of Claim. Are
25 you claiming those claims related to any

1 J. LEPPER

2 specific summonses?

3 MR. MORRIS: Objection. Move to
4 strike you have a Notice of Claim.

5 Q. Did you receive any summonses in
6 July 2018?

7 MR. MORRIS: Mark it for a ruling.
8 2018, counsel. Move on.

9 Q. Did you receive refunds for any
10 summonses or related to any summonses
11 related to the tree house?

12 MR. MORRIS: Objection. Asked and
13 answered, answered. Answered again.
14 We're here at 1:48, counsel. Ask your
15 questions and move on.

16 Q. Which summonses was it that you
17 believe you were entitled to refunds for?

18 MR. MORRIS: Objection. Mark it
19 for a ruling. Move on.

20 Q. How many summonses did you receive
21 related to the tree house?

22 A. Again, I believe I answered all
23 these questions in my prior deposition. Did
24 I not?

25 Q. I don't know. Did you give an

1 J. LEPPER

2 answer? You didn't give an answer. You
3 said you said it in the prior deposition.
4 That's not an answer.

5 MR. MORRIS: Counsel --

6 A. We did the deposition.

7 MR. MORRIS: That's correct. Note
8 the objection to this 50-h examination
9 inquiry. This is not a deposition. No
10 matter how many times you
11 mischaracterize it or that you attempt
12 to make it one.

13 MR. TOSCA: I'll say it again. I
14 can ask all questions related to the
15 claims in the Notice of Claim.

16 Q. Your malicious prosecution claim,
17 Mr. Lepper, is that brought in this Notice
18 of Claim in reference to any specific
19 summons?

20 A. Yes.

21 Q. And which summonses are they that
22 you are claiming malicious prosecution of in
23 this Notice of Claim?

24 MR. MORRIS: Note my objection.

25 The Notice of Claim speaks for itself.

1 J. LEPPER

2 Are you asking him generally, or are
3 you asking him about the document?

4 MR. TOSCA: I'm asking him what
5 claims he is making with regard to
6 malicious prosecution. He's making the
7 claim. Let me hear what he has to say.
8 That's why we're here.

9 A. Can I answer?

10 Q. Yes.

11 A. What is the malicious -- can you
12 repeat the question?

13 MR. TOSCA: Madam Reporter, can
14 you read back the question for him.

15 (Whereupon, the referred to
16 question was read back by the
17 reporter.)

18 A. All of them.

19 Q. Which ones?

20 A. There are three that we had prior
21 to that that were already overruled and
22 overturned; and then I believe there was a
23 few after and also the threat and the order
24 to remove the tree house in its entirety
25 when I could be fined on a daily basis, that

1 J. LEPPER

2 was malicious. The threat of being fined
3 daily. I'm up to a thousand dollars.

4 Q. Who, specifically, made those
5 claims?

6 A. I believe it was in the letter to
7 Mr. Fellman.

8 Q. Did anyone make verbal threats to
9 you regarding daily fines?

10 A. No. I have a written threat.

11 Q. How many written threats do you
12 have?

13 A. I don't know. The one was enough.

14 Q. Did you keep records of all the
15 written threats that you received?

16 A. I kept records of all the
17 documents received from the village.

18 Q. Do those records contain the
19 written threats you're talking about?

20 MR. MORRIS: Objection. You can
21 answer again.

22 A. I found it to be malicious in the
23 order to remove a tree house, and that I
24 could be fined daily.

25 Q. How many documents say that?

1 J. LEPPER

2 MR. MORRIS: Objection.

3 A. I don't recall. At least one.

4 Q. Do you know who wrote that, the
5 one that you don't remember?

6 MR. MORRIS: Objection. Asked and
7 answered. Move on, counsel.

8 Q. Did you speak to Mr. Fellman about
9 your claimed threat?

10 MR. MORRIS: Objection. Counsel,
11 you're referring to something in 2018
12 or 2019?

13 MR. TOSCA: I'm referring to
14 whatever he's talking about that's
15 documented he's referring to. I don't
16 know when it was. He's telling me.

17 MR. MORRIS: Mark it for a ruling.
18 Move on.

19 MR. TOSCA: You're not letting him
20 answer that question?

21 MR. MORRIS: Counsel, what's the
22 confusion? When I say mark it for a
23 ruling and say move on, that means move
24 on.

25 MR. TOSCA: I don't understand why

1 J. LEPPER

2 you keep obstructing this hearing.

3 MR. TOSCA: Note our objection.
4 It's 1:54. You're asking -- counsel,
5 let me finish. You're asking about
6 things in 2018 and 2019. Stop. We're
7 marking it for a ruling. If you don't
8 stop, then go to court and explain to
9 them how you want to rehash a
10 deposition of which you oversaw for
11 seven hours of which you were there;
12 and the best part about it is, we're in
13 a federal litigation.

14 So when you do that, be sure to
15 explain how you tried to reintroduce
16 every question asked at a deposition.
17 So when you do that, I'm marking it for
18 a ruling and we intend to introduce
19 just that, that it wasn't some other
20 attorney, it was you. And you know
21 what's going on very well here, so we
22 made malicious prosecution claims --
23 I'm not done. We made malicious
24 prosecution claims. We put it in a
25 ten-page Notice of Claim. This is your

1 J. LEPPER

2 opportunity to ask questions about
3 that, what's missing; and, again,
4 General Municipal Law Section 50-h
5 relative to the occurrence and extent
6 of injuries or damages. You don't get
7 a deposition. It's an examination; and
8 at this point, it's gone on since
9 10:30.

10 So ask your questions and ask
11 about -- again, things that are well
12 before the time frames that a Notice of
13 Claim is applicable to I'm going to
14 object. I'm going to mark it for a
15 ruling.

16 MR. TOSCA: Are you done?

17 MR. MORRIS: Counsel, I'm done.
18 Are you done?

19 MR. TOSCA: We've been here since
20 10:30. Most of the talking has been
21 done by you. Your client has hardly
22 answered any questions; and I think if
23 we had to do a word count, you come
24 very far ahead of anyone here for no
25 legitimate reason whatsoever. And we

1 J. LEPPER

2 consider this delay -- now, I will go
3 on; but we reserve the right to dismiss
4 any claims brought related to this
5 Notice of Claim. This hearing is being
6 obstructed. So I'll go on.

7 MR. MORRIS: If that's your
8 position, then you're going to move to
9 dismiss, let's end it now.

10 MR. TOSCA: No. I'm ready to go
11 on.

12 MR. MORRIS: So you're going to
13 withdraw that statement that you just
14 made.

15 MR. TOSCA: No. I'm not
16 withdrawing anything. I'm warning you
17 we're going to --

18 MR. MORRIS: Why don't we take a
19 five minute -- why don't you take a
20 five-minute break?

21 MR. TOSCA: I don't need a
22 five-minute break. I'm fine.

23 MR. MORRIS: Mr. Lepper, please
24 turn off your video. Please take five
25 minutes.

1 J. LEPPER

2 MR. TOSCA: I don't want to take a
3 five-minute break. I'm fine with going
4 on. I'm just telling you that we
5 reserve our right based on your
6 obstructions making a motion at the
7 appropriate time. Putting it on the
8 record. That's all, okay?

9 MR. MORRIS: We're not proceeding
10 if you're putting us on warning. We're
11 not going to let you take an eight-hour
12 Notice of Claim examination pursuant to
13 50-h; and then you're going to seek to
14 dismiss so -- counsel, I am speaking.

15 MR. TOSCA: Go ahead, talk. You
16 looked like you stopped because you
17 paused; so when you pause, everything
18 stops. So now I can say something, so
19 don't tell me to be quiet. Enough.
20 Your insults are really something else
21 here.

22 MR. MORRIS: Again, note my
23 objection. To the extent that you are
24 going to reserve your right to dismiss,
25 we are going to end this now.

1 J. LEPPER

2 MR. TOSCA: If you end it now,
3 then as far as I'm concerned, you
4 violated the terms of 50-h under
5 General Municipal Law not only by
6 obstructing questions but now by trying
7 to terminate the hearing. I am not
8 prepared to terminate this, but I'm
9 putting you on warning that this
10 conduct is so obstructive that we
11 reserve rights to move based on that.

12 MR. MORRIS: I don't want to
13 interrupt you, so I'm going to speak --

14 MR. TOSCA: That's all right. Go
15 ahead.

16 MR. MORRIS: Counsel, to the
17 extent you're making a representation
18 that you're reserving a right for
19 moving to dismiss, we are not going to
20 proceed.

21 MR. TOSCA: I'm not ready to
22 terminate the proceeding. If you do
23 so, you do so at your peril, sir, all
24 right?

25 MR. MORRIS: Whenever you're ready

1 J. LEPPER

2 to remove your claim that you're going
3 to move to dismiss this because you
4 didn't have an opportunity to ask
5 questions at two o'clock in the
6 afternoon on July 20, 2020, whenever
7 you're ready to remove that, we'll
8 proceed.

9 MR. TOSCA: I reserve -- I'm
10 sorry. Go ahead.

11 MR. MORRIS: For a General
12 Municipal Law Section 50-h, examination
13 not deposition, that started at
14 10:30 a.m. this morning. Counsel, you
15 let me know when you're ready to
16 withdraw; and I'll continue the
17 examination.

18 MR. TOSCA: We continue to reserve
19 our right to make any appropriate
20 motion with regard to claims. We are
21 not being given a full and fair
22 opportunity to conduct a hearing, an
23 Examination Under Oath, that the
24 village and the other respondents are
25 entitled to at this time. Put the

1 J. LEPPER

2 client back on. We'll continue. Is
3 Mr. Lepper back?

4 MR. MORRIS: Counsel, we're not
5 going to allow you to move to dismiss.
6 Maybe we should make a motion, and
7 maybe we should have the court evaluate
8 this before continuing.

9 MR. TOSCA: You know what the
10 remedies are, Mr. Morris. You exercise
11 whatever remedies you see fit.

12 MR. MORRIS: Okay. If you're
13 going to take that position, we're
14 going to end this.

15 MR. TOSCA: And we consider that a
16 default, intentional default.

17 MR. MORRIS: Again, you're not
18 going to continue and then later move
19 to dismiss; can we agree?

20 MR. TOSCA: No. I can't agree to
21 anything because you've been
22 obstructive throughout this entire
23 process.

24 MR. MORRIS: Have a great day.
25 We're now -- have a great day. We're

1 J. LEPPER

2 now ending this. Thank you so much.

3 MR. TOSCA: Let the record reflect
4 that the witness has left. Let's close
5 the hearing at this point. They're not
6 appearing, and they're not speaking; so
7 I have to assume that they have
8 terminated. They already said they've
9 terminated this hearing --

10 MR. GLASS: It looks like we lost
11 the attorney, Morris.

12 MS. FILMORE: He definitely hung
13 up. John Lepper is still on.

14 MR. TOSCA: He could be with John
15 Lepper.

16 In the event though, just note the
17 time that the deposition had finalized;
18 and that the 50-h hearing has been
19 terminated by Mr. Lepper and his
20 attorney, and we'll reserve our rights.
21 Thank you.

22 (Whereupon, at 2:02 p.m., the
23 Examination of this witness was
24 concluded.)
25

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1 J. LEPPER

2 D E C L A R A T I O N

3
4 I hereby certify that having been first
5 duly sworn to testify to the truth, I gave
6 the above testimony.

7
8 I FURTHER CERTIFY that the foregoing
9 transcript is a true and correct transcript
10 of the testimony given by me at the time and
11 place specified hereinbefore.

12
13
14

15 JOHN LEPPER

16
17
18 Subscribed and sworn to before me
19 this ____ day of _____ 20 ____.

20
21

22 NOTARY PUBLIC

J. LEPPER
E X H I B I T S

RESPONDENTS' EXHIBITS:

EXHIBIT	EXHIBIT	PAGE
Exh A	Notice of Claim	10

I N D E X

EXAMINATION BY	PAGE
MR. TOSCA	3

QUESTIONS MARKED FOR RULINGS

PAGE 3 LINE 11

What is your address?

PAGE 46 LINE 10

Do you recall your daughter asking
that question at the village --

PAGE 46 LINE 20

Mr. Lepper, do you recall your
daughter asking a question of anyone at the
village office to the extent that she
indicated the mayor stole money from her?

PAGE 47 LINE 3

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1 J. LEPPER

2 When you went down to the village
3 hall, was it both your children you went
4 with?

5 PAGE 55 LINE 6

6 Mr. Lepper, when was the last time
7 you saw Dr. Villina in his office?

8 PAGE 73 LINE 10

9 Did you alert your friends and
10 neighbors that you were going to court that
11 day?

12 PAGE 79 LINE 14

13 How many people attended that
14 you've notified about this hearing?

15 PAGE 79 LINE 23

16 When you appeared on that date,
17 what were you coming to court to do at the
18 time you wore your partial uniform?

19 PAGE 80 LINE 21

20 Had you received tickets in
21 reference to the tree house that's the
22 subject of this claim?

23 PAGE 84 LINE 6

24 At any rate, Mr. Lepper, when did
25 you first start construction on the tree

1 J. LEPPER

2 house?

3 PAGE 86 LINE 17

4 When was the last time you
5 performed any work on the tree house?

6 PAGE 86 LINE 24

7 When was the last time you were in
8 the tree house?

9 PAGE 87 LINE 4

10 When was the last time you saw the
11 tree house?

12 PAGE 87 LINE 9

13 Has anyone made use of the tree
14 house in the last year?

15 PAGE 87 LINE 13

16 When was the last time you
17 received any summonses related to the tree
18 house?

19 PAGE 87 LINE 19

20 When was the first time you
21 received any summonses related to the tree
22 house?

23 PAGE 88 LINE 5

24 Did you receive any summonses in
25 July 2018?

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1 J. LEPPER

2 PAGE 88 LINE 16

3 Which summonses was it that you
4 believe you were entitled to refunds for?

5 PAGE 92 LINE 8

6 Did you speak to Mr. Fellman about
7 your claimed threat?

8

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J. LEPPER

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF SUFFOLK)

I, NICOLE VELTRI, RPR, CRR, a Notary
Public for and within the State of New York,
do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not related
to any of the parties to this action by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 31th day of July 2020.

Nicole Veltri

NICOLE VELTRI, RPR, CRR

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ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: Lepper, John And Noelle Lepper v. Villiage Of Babylon,
Raph Scordino, Kevin Muldowney, Robyn Silvestri, Tony Davida, Mary
Adams, Stephen Feldman, Suzanne Schettino, Gerard Glass, And Deborah
Longo

DATE OF DEPOSITION: 7/20/2020

WITNESSES' NAME: John Lepper

PAGE	LINE (S)	CHANGE	REASON
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[illegible]

John Lepper

SUBSCRIBED AND SWORN TO BEFORE ME

THIS DAY OF , 20 .

(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

[1 - allowing]

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EXHIBIT “P”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

JOHN LEPPER and NOELLE LEPPER, individually

and as parents and natural guardians of

their infant children, B.J.L and B.I.,

Plaintiffs,

- against -

VILLAGE OF BABYLON; and RALPH SCORDINO,
Mayor, KEVIN MULDOWNEY, Deputy Mayor, ROBYN
SILVESTRI, Village Trustee, TONY DAVIDA,
Village Trustee, MARY ADAMS, Village Trustee;
STEPHEN FELLMAN, Village of Babylon Building
Inspector; SUZANNE SCHETTINO, Department of
Public Works; GERARD GLASS, Esq., Village of
Babylon Attorney; DEBORAH LONGO, Planning
Board, Village of Babylon, each individually
and in their official capacity, and John
and/or Jane Doe, unnamed, unidentified
complainants,

Defendants.

Index No.: 2:18-cv-07011 JFB-GRB

-----x

135 Pinelawn Road
Melville, New York

DEBORAH LONGO

October 7, 2019
9:55 a.m.

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

2

Examination Before Trial of a
Defendant, DEBORAH LONGO, pursuant to
Subpoena, before Stephanie O'Keefe, a Notary
Public of the State of New York.

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John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

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John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

4

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

5

1

2

MR. MORRIS: Time now is 9:55.

3

D E B O R A H L O N G O, called as a witness,

4

having been duly sworn by a Notary

5

Public, was examined and testified as

6

follows:

7

EXAMINATION BY

8

MR. MORRIS:

9

Q. Please state your full name for

10

the record.

11

A. Deborah Longo.

12

Q. What is your Address?

13

A. 53 Thompson Avenue, Babylon,

14

New York 11702.

15

MR. TOSCA: Before we begin, we

16

are going to reiterate our objection to

17

the use of a video camera. It's not

18

being take by a third party to certify

19

the record. We object to the use of the

20

video.

21

MR. MORRIS: Counsel, your

22

objection is noted, we ask that you

23

follow up in writing.

24

Q. Ms. Longo, you know how to tell

25

the truth, right?

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

6

1 Longo

2 A. Yes.

3 Q. You know you're under oath,
4 right?

5 A. Yes.

6 Q. Have you testified under oath
7 before?

8 A. Nope.

9 Q. Do you understand the penalties
10 for lying under oath?

11 A. Yes.

12 Q. Is there anything preventing you
13 from telling the truth here today?

14 A. No.

15 Q. Are you on any drugs, alcohol, or
16 medication that would impact your ability to
17 testify here today?

18 A. No.

19 Q. Do you understand the penalties
20 for knowingly making a materially false
21 statement?

22 A. Yes.

23 Q. Have you prepared for this
24 deposition here today?

25 A. Yes.

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

7

1 Longo

2 Q. Tell me everything you did to get
3 ready for this deposition?

4 MR. TOSCA: Objection.

5 Attorney/client privilege.

6 Q. Excepting conversation that you
7 had with your attorney, tell me everything you
8 did to get ready for this deposition today.

9 A. Nothing further, nothing more.

10 Q. You're under oath.

11 Did you take a look at any
12 documents before today?

13 A. No.

14 Q. Did you review any transcripts to
15 get ready for this deposition today?

16 A. No.

17 Q. Did you ever visit John Lepper's
18 house?

19 A. I have driven by because I have a
20 friend who lives on the street a few doors
21 down.

22 Q. What friend.

23 A. Holly Gar (phonetic).

24 Q. When did you do that?

25 A. Months ago. I don't know the

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

8

1 Longo

2 date.

3 Q. When you say months ago, was it
4 within 2019?

5 A. 2019, probably.

6 Q. Was it in the past three months?

7 A. No.

8 Q. In the past six months?

9 A. Maybe.

10 Q. When you say maybe, do you recall
11 what time of day it was?

12 A. Midday.

13 Q. Was it during the week or a
14 weekend?

15 A. During the week.

16 Q. For what purpose did you visit
17 your friend?

18 A. I wasn't visiting. I drove past
19 because she had decorated her porch and wanted
20 us to see it for a graduation party.

21 So maybe it's more than six
22 months.

23 Q. When you say graduation party --

24 A. She was having a graduation party
25 for her daughter.

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

9

1 Longo

2 Q. What is her daughter's name?

3 A. I think it was Lindsay.

4 Q. From where did Lindsay did
5 graduate?

6 A. St. John's.

7 Q. Was that high school,
8 undergraduate --

9 A. High school.

10 Q. Presumably this was in the
11 summer?

12 A. Yes, I believe it was late summer
13 before she went to school.

14 Q. Was this the summer of 2019?

15 A. No.

16 Would have been last year, I
17 think. I think it was.

18 Q. When you think, what was the year
19 you think it was?

20 A. I believe 2018.

21 Q. When you say you drove by
22 Mr. Lepper's house, from where were you
23 coming?

24 A. Deer Park Avenue.

25 Q. From what location were you

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

10

1 Longo

2 coming?

3 A. East. Well, north and then east
4 because you would make a right.

5 Q. From what location were you
6 coming north and then east?

7 A. From Deer Park Avenue to, I
8 believe it's past Cockenoe because I don't go
9 up there all the time, so I went to whatever
10 the next street is and made a right and came
11 down?

12 Q. You got in your car that day,
13 correct?

14 A. I got in my car, yes.

15 Q. You weren't in somebody else's
16 car, right?

17 A. No.

18 Q. When you got in your car, where
19 was your car parked?

20 A. At work.

21 Q. So you went from the Village of
22 Babylon?

23 A. Around lunchtime or later in the
24 day, I don't remember exactly.

25 Q. What car was that?

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

11

1 Longo

2 A. My car.

3 Q. What is your car?

4 A. A 2016 Cadillac ATS.

5 Q. When you went in your car and you
6 passed Mr. Lepper's house, you were working
7 that day?

8 A. Yes.

9 Q. Where were you working?

10 A. Village Hall.

11 Q. In what capacity?

12 A. I work in the Building
13 Department.

14 Q. During your work, you left to
15 pass by Mr. Lepper's house?

16 A. I went to go to Holly's house to
17 see the, like I said decorations, we had all
18 bought mums. Not mums. Big pots of flowers
19 at Best Market, so she was decorating for a
20 party.

21 And I believe we all went past it
22 different times.

23 Q. Who is we all?

24 A. Girls in the office.

25 Q. Who are these girls in the

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12

1 Longo

2 office?

3 A. Well, Jeanette works in the
4 office, I don't know whether she went or not,
5 but we were talking about it, Jeanette Yantz,
6 Y-A-N-T-Z.

7 Q. When you say girls in the office,
8 is there anyone else aside from Jeanette Yantz
9 in the office?

10 A. At the time, it was myself,
11 Jeanette, and Holly.

12 Q. You paid for flowers; is that
13 right?

14 A. I had bought them earlier and
15 told her. She was decorating, so she was
16 looking for big pots of flowers to put on her
17 porch.

18 Q. How did you pay for those pots of
19 flowers?

20 A. How did I pay? I would assume
21 cash or a debit card.

22 Q. As you sit here today, do you
23 know?

24 A. No.

25 Q. You went to Best Market?

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

13

1 Longo

2 A. Yes.

3 Q. When did you go to Best Market
4 for those flowers?

5 A. I would say probably a few days
6 before that.

7 Q. Who else aside from Lindsay's
8 daughter was graduating for this graduation
9 party?

10 A. No one that I'm aware.

11 Q. And why did you buy flowers for
12 this graduation party?

13 A. I did not buy flowers for the
14 graduation party. I bought flowers for my
15 home and told Holly they were a good deal.
16 She was looking for big pots of flowers.

17 Q. How did you tell her this?

18 A. In my office.

19 Q. When you say you told her in your
20 office, by what means?

21 A. Verbally.

22 Q. Does she work in the office?

23 A. She did up until couple months
24 ago.

25 Q. What happened a couple months ago

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

14

1 Longo

2 to Holly?

3 A. She got a different job.

4 Q. She voluntarily separated from
5 the Village of Babylon?

6 A. Yes.

7 Q. What was her position?

8 A. She worked for the assessor, she
9 was secretary for the assessor.

10 Q. So at the time, who were the
11 girls in the office aside from Jeanette?

12 A. Myself, Holly, and Jeanette.

13 Q. Anyone else?

14 A. Ellie Rubino worked part time, I
15 believe. I'm not sure if she had left at that
16 point. It could be her or Kathleen McLean,
17 I'm not sure of the time.

18 E-L-L-I-E R-U-B-I-N-O. Kathleen,
19 M-C-L-E-A-N.

20 Q. Jeanette, Rubino, McLean, Holly,
21 yourself, anyone else in that office to which
22 you referred?

23 A. Well, Mr. Fellman works out of
24 the office, although he's not there very
25 often. He's out in the field. Richard Meyer

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

15

1 Longo

2 is the rental housing inspector out in the
3 field. That's it.

4 Q. What is name of office to which
5 you are referring?

6 A. Building Department.

7 Q. Building Department where?

8 A. At the Village of Babylon.

9 Q. So those persons you mentioned
10 earlier, that's the Village of Babylon
11 Building Department?

12 A. Yes.

13 Q. Anyone else compose of the
14 Village of Babylon --

15 A. Excuse me.

16 Q. Does anyone else compose the
17 Village of Babylon Building Department?

18 A. No.

19 Q. Do you act as the head of the
20 Village of Babylon Building Department?

21 A. Technically Mr. Fellman is the
22 head of the Building Department.

23 Q. What is your title?

24 A. Secretary to the building
25 inspector.

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

21

1 Longo

2 Q. Has the mayor of the Village of
3 Babylon changed since your employ at the
4 Village of Babylon?

5 A. No.

6 (Mr. Glass entered the deposition
7 room.)

8 Q. Ms. Longo, as secretary to the
9 building inspector for the Village of Babylon,
10 is there a written job description for your
11 title?

12 A. No.

13 Q. Is there a civil service job
14 description for your title?

15 A. I was hired as a senior clerk
16 typist. I believe they changed that since,
17 but I don't know what it is.

18 Q. Who hired you as a senior clerk
19 typist?

20 A. The mayor.

21 Q. What year was that?

22 A. 2008.

23 Q. What where your day-to-day job
24 duties when you were hired as a senior clerk
25 typist by the mayor of the Village of Babylon?

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

22

1 Longo

2 A. Any day-to-day correspondence,
3 any letters, that kind of thing that the
4 building inspector would ask me to do. I
5 also -- you know. Let me think for minute. I
6 have to report to the State, the local school
7 districts on any new housing, the yearly, I
8 have to do a report to the State about all
9 permits that we've taken care of. The
10 day-to-day administrative and/or clerical work
11 that go along with being a secretary.

12 Q. Have your job duties changed
13 since 2008?

14 A. No.

15 Q. Have the persons responsible for
16 your employ at the Village of Babylon changed
17 since 2008?

18 A. No.

19 Q. To whom do you answer at the
20 Village of Babylon as secretary to the
21 building inspector for the Village of Babylon?

22 A. Directly to the building
23 inspector.

24 Q. Who is that?

25 A. Stephen Fellman.

John Lepper v. Village of Babylon
Deborah Longo - October 7, 2019

23

1 Longo

2 Q. Throughout your tenure of employ
3 for the Village of Babylon, has the building
4 inspector changed?

5 A. No.

6 Q. Do you answer to anyone other
7 than the building inspector for the Village of
8 Babylon?

9 A. We all answer to the mayor.

10 Q. Who is the mayor?

11 A. Mayor Ralph Scordino.

12 Q. Explain when you say "we all
13 answer."

14 A. Ultimately, he is, I guess, in
15 charge of the office, so I would think
16 ultimately he would be who we would answer to.

17 Q. Have you answered to the mayor
18 previously?

19 A. Previous to my employment?

20 Q. Previous to today?

21 A. If he asks me a question about
22 something, certainly I would answer him.

23 Q. Aside from asking you a question,
24 does he send you correspondence?

25 A. Not usually directly. It's

John Lepper v. Village of Babylon
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40

1 Longo

2 Q. This is the first time you have
3 ever been sued?

4 A. Yes, sir.

5 Q. You can't recall when you gave
6 over electronic mail correspondence about this
7 lawsuit?

8 A. No.

9 Q. But you didn't do it more than a
10 couple months ago, correct?

11 A. No.

12 Q. Did you ever receive --
13 Withdrawn.

14 Mr. Fellman is the one who taught
15 you what documents are required to issue
16 certificate of occupancies; is that right?

17 A. Yes.

18 Q. How did he do that?

19 A. Verbally.

20 Q. Any other form than verbally?

21 A. No.

22 Q. Did you take notes?

23 A. I don't remember. It would have
24 been years ago.

25 Q. The reason you can't recall is

John Lepper v. Village of Babylon
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41

1 Longo

2 because it was so many years ago, correct?

3 A. Yes.

4 Q. Aside from those verbal
5 instructions, was there anything else that he
6 showed you in which to perform your job
7 functions?

8 A. No.

9 Q. Did you take any notes?

10 A. Did I take notes, I don't
11 remember.

12 I'm sure at time years ago when I
13 was first starting. I don't remember.

14 Q. How did you take those notes?

15 A. With pen and paper.

16 Q. Did you maintain that pen and
17 paper at the office?

18 A. From 2008? I would assume.

19 Q. Where did you take these notes?

20 A. I'm sorry.

21 Q. Where did you take these notes?

22 A. In the office.

23 Q. Where do you maintain these
24 notes?

25 MR. TOSCA: Objection.

John Lepper v. Village of Babylon
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1 Longo

2 You can answer.

3 A. They're probably in the garbage
4 somewhere.

5 Q. You destroyed those notes?

6 MR. TOSCA: Objection.

7 You can answer.

8 A. I didn't destroy them. If I was
9 done with the notebook, I wouldn't have saved
10 it from ten years ago.

11 Q. So you put these notes in a
12 notebook; is that right?

13 A. Steno pad.

14 Q. Where is that steno pad now?

15 MR. TOSCA: Objection.

16 You can answer.

17 A. Probably in the landfill.

18 Q. When did you put it in the
19 landfill?

20 A. Ten years ago.

21 Q. So you took the notes and you
22 threw them out; is that right?

23 MR. TOSCA: Objection.

24 You can answer.

25 A. I don't remember exactly.

John Lepper v. Village of Babylon
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43

1 Longo

2 Q. To what is it that you refer if
3 you need to figure out whether you're doing
4 your job right?

5 A. If I have a question, I ask
6 Mr. Fellman.

7 Q. Mr. Fellman is the authority on
8 the subject; is that right?

9 A. On something like building code,
10 yes.

11 Q. Anyone else to whom you refer if
12 you don't know the answer to a question?

13 A. No.

14 Q. Are you employed full time or
15 part time by the Village of Babylon as the
16 secretary to the building inspector?

17 A. Full time.

18 Q. How much are you being paid?

19 A. \$46,000.

20 Q. Is that a yearly salary?

21 A. Yes.

22 Q. How many hours do you work for
23 the Village of Babylon?

24 A. Thirty-five.

25 Q. Do you maintain any other

John Lepper v. Village of Babylon
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44

1 Longo

2 employment currently?

3 A. No.

4 Q. Prior to your employment at the
5 Village of Babylon, where did you work?

6 A. I ran a dance studio.

7 Q. Where did you run that dance
8 studio?

9 A. Lindenhurst and Massapequa.

10 Q. What was the name of that dance
11 studio?

12 A. L A Dance Studio.

13 Q. What were the years in which you
14 maintained LA Dance Studio?

15 A. Maybe -- I don't know exactly,
16 approximately 1998 to 2008.

17 Q. To be clear, did you work for
18 someone?

19 A. Yes.

20 Q. Who did you work for?

21 A. Linda Accardi, A-C-C-A-R-D-I.

22 Q. What were your job duties at LA
23 Dance Studio?

24 A. I managed the studio.

25 Q. To what did that consist?

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1 Longo

2 A. Billing, scheduling, costuming.

3 Q. What was your job title at LA

4 Dance Studio?

5 A. Studio manager.

6 Q. Did it ever change?

7 A. No.

8 Q. They maintained multiple
9 locations, that being LA Dance Studio?

10 A. Yes.

11 Q. Which location did you report?

12 A. Both of them.

13 Q. Was that a full-time or part-time
14 job?

15 A. Part-time.

16 Q. As manager, to whom did you
17 answer?

18 A. Linda.

19 Q. Anyone other than Ms. Accardi?

20 A. No.

21 Q. Was Mr. Accardi the owner of LA
22 Dance Studio?

23 A. Yes.

24 Q. As part the LA Dance Studio, did
25 you maintain electronic mail?

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46

1 Longo

2 A. No.

3 Q. As part of LA Dance Studio, did
4 you maintain a website?

5 A. No.

6 Q. As part of LA Dance Studio, did
7 you maintain a personal cellular phone?

8 A. No.

9 Q. Prior to working for LA Dance
10 Studio, what if any, employment did you hold?

11 A. It would be before my children.

12 Q. When you say, before your
13 children, what year would that where?

14 A. Prior to the 1984.

15 Q. Did you maintain employment when
16 you went to high school?

17 A. Yes.

18 Q. Where did you maintain employment
19 throughout high school?

20 A. Now Stop & Shop, whatever it was
21 then, Edwards or Finest supermarket.

22 Q. How old were you when you worked
23 at Edwards or Finest supermarket?

24 A. Sixteen, seventeen.

25 Q. What was your job title?

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1 Longo

2 A. Checker, I don't know what it is,
3 checker, I checked people out.

4 Q. To whom did you answer?

5 A. I have no idea.

6 Q. How long did you maintain that
7 position at Edwards?

8 A. Maybe two years, I really don't
9 remember. Three years.

10 Q. What year did you first start at
11 Edwards?

12 A. '75, possibly. I don't know.

13 Q. How did you apply to Edwards?

14 A. I don't remember.

15 Q. You were hired at Edwards; is
16 that right?

17 A. Yes.

18 Q. Did you maintain any other
19 position aside from the checker position?

20 A. No.

21 Q. Do you know who hired you at
22 Edwards?

23 A. No.

24 Q. At some point, the employment at
25 Edwards ended; is that right?

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1 Longo

2 A. Yes.

3 Q. How did it end?

4 A. I assume I left. I don't
5 remember. I didn't get fired, I left for
6 whatever reason.

7 Q. So you remember you did not get
8 fired?

9 A. No.

10 Q. Do you recall your reason for
11 leaving?

12 A. I don't remember.

13 Q. Did you maintain employment after
14 Edwards?

15 A. I guess after school. I don't
16 remember if I had something else after there.

17 Q. Aside from Edwards, the Village
18 of Babylon and the dance studio, LA Dance
19 Studio, did you maintain any other employment?

20 A. I worked at Doft & Company on
21 Wall Street. D-O-F-T. I think that was the
22 name. I don't even remember.

23 Q. When did you work for Doft?

24 A. Maybe '78, '79, something like
25 that.

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1 Longo

2 Q. Who hired you?

3 A. I don't remember.

4 Q. Do you recall if you applied for
5 the position?

6 A. I don't remember.

7 Q. What was your job title?

8 A. I worked with the trader. I
9 don't know what my job title was, I worked
10 with one of the traders.

11 Q. Was it full time or part time?

12 A. Full time.

13 Q. Where was it located?

14 A. Wall Street. I don't know where.

15 Q. When you say Wall Street, New
16 York City?

17 A. Yes, New York.

18 Q. How long did you maintain
19 employment at Doft?

20 A. Until 1980.

21 Q. What occurred, if anything, in
22 1980.

23 A. I got married.

24 Q. How did you leave Doft?

25 A. I resigned.

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1 Longo

2 Q. What, if any, employment did you
3 have after Doft?

4 A. Mergenthaler Linotype.
5 Merganthaler, L-I-N-O-T-Y-P-E, in Melville on
6 Old Country Road.

7 Q. What year did you start with that
8 firm?

9 A. 1980.

10 Q. Going back a second to Doft, for
11 whom did you work at Doft?

12 A. I can't -- I can't remember his
13 name. Norman Gotleib.

14 Q. Did you report to anyone else
15 other than Norman Gotleib at Doft?

16 A. No.

17 Q. In 1980, you started working for
18 another firm?

19 A. Mergenthaler Linotype.

20 Q. How did you come to be employed
21 by that firm?

22 A. I don't remember.

23 Q. Did you submit a job application?

24 A. I just don't remember. I would
25 assume. I don't know.

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1 Longo

2 Q. Did your husband help with you
3 with the employment at --

4 A. No.

5 Q. How long did you work for
6 Morgenthaler Linotype?

7 A. Four years.

8 Q. What was your job title?

9 A. Secretary to the vice president
10 of finance.

11 Q. Who was the vice president of
12 finance?

13 A. Brian Burke.

14 Q. What were your day-to-day job
15 duties?

16 A. Clerical. I don't remember much
17 more.

18 Q. Physically, what did you do day
19 to day?

20 A. Type letters, take shorthand,
21 just don't remember much besides that.

22 Q. Did there come a time that you
23 stopped working for Mr. Burke?

24 A. Yes.

25 Q. What happened?

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52

1 Longo

2 A. I had a baby.

3 Q. Your first child?

4 A. Yes.

5 Q. What year was your child born?

6 A. 1984.

7 Q. Did you quit, were you

8 terminated, something else?

9 A. No, I left. I wasn't going to
10 work.

11 Q. When was the next time you were
12 employed?

13 A. Not until I worked at the dance
14 studio.

15 Q. Is it fair to say from 1984 to
16 1988, you were not employed in any form or
17 fashion?

18 A. No.

19 MR. TOSCA: Objection.

20 Q. In 2008, you left the dance
21 studio; is that right?

22 A. Yes. Um-hum.

23 Q. How did you leave?

24 A. Resigned.

25 Q. Was there a gap in between your

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1 Longo

2 employment at LA Dance Studio and the Village
3 of Babylon?

4 A. Just a couple of months.

5 Q. Why did you leave the dance
6 studio and have a couple months of
7 unemployment?

8 A. Because my children were grown
9 out of it and I wasn't gonna do it anymore.

10 Q. How many children went to the
11 dance studio?

12 A. Three.

13 Q. What are their names?

14 A. Meghann, M-E-G-H-A-N-N, Delaney,
15 D-E-L-A-N-E-Y, and Donovan, D-O-N-O-V-A-N.

16 Q. When you say they grew out of it,
17 who was the last child that grew out of it?

18 A. Donovan.

19 Q. How old was Donovan in 2008?

20 A. I guess 17.

21 Q. When did you first take the civil
22 service exam?

23 A. I think it was spring of 2008 or
24 maybe the fall of 2007.

25 Q. What was the civil service exam

John Lepper v. Village of Babylon
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54

1 Longo

2 that you took?

3 A. Senior clerk typist.

4 Q. That's the same position that you
5 currently hold?

6 A. Yes.

7 Q. Are you part of a union?

8 A. No.

9 Q. Have you received any pay raises
10 throughout your tenure at the Village of
11 Babylon as secretary to the building
12 inspector?

13 A. Yes.

14 Q. When were those raises?

15 A. Everybody gets a yearly \$1,000
16 raise.

17 Q. Is that part of a step program?

18 A. I don't know. It's just what it
19 is.

20 Q. Do you maintain a website?

21 A. No.

22 Q. Do you blog?

23 A. No.

24 Q. Do you maintain any social media
25 accounts?

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55

1 Longo

2 A. None at all.

3 Q. When did you first become

4 involved in the Village of Babylon

5 administration?

6 A. You mean, when did I start

7 working there?

8 Q. Yes.

9 A. 2008.

10 Q. To whom did you initially report

11 to within the Village of Babylon?

12 A. Stephen Fellman.

13 Q. Who, if anyone, reports to you?

14 A. Jeanette Yantz, it was Holly Gar,

15 now Marietta Menchini, M-E-N-C-H-I-N-I.

16 Q. Those persons, what are their job

17 titles?

18 A. Clerk typists.

19 Q. Is that the same job title as you

20 or something different?

21 A. I guess it's basically the same,

22 and one would be the senior clerk typist.

23 Q. How is it that those persons came

24 the report to you?

25 A. They were hired after me. I

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56

1 Longo

2 never had full-time people when I started,
3 just had part-time clerical.

4 Q. As part of your hire with the
5 Village of Babylon as secretary to the
6 building inspector, do you complete any forms?

7 A. Application form, I would
8 imagine. I don't remember.

9 Q. Anything else?

10 A. I would imagine payroll
11 information.

12 MR. MORRIS: Counsel, you didn't
13 produce this witness' personnel file,
14 did you?

15 MR. TOSCA: Counsel, I'm not
16 going to respond to questions on the
17 record that you're asking me about stuff
18 that's unrelated.

19 We're here for a deposition of
20 Ms. Longo. Please continue with the
21 deposition. You got responses from us,
22 so what you have is what you have.

23 RQ MR. MORRIS: We're going to
24 request copies of the forms completed,
25 job applications, any interview notes

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1 Longo

2 and things that witness has mentioned
3 here today.

4 Q. Ms. Longo, do you hold any
5 licenses such as a notary public?

6 A. No.

7 Q. Driver's license?

8 A. Yes.

9 Q. Anything other than a driver's
10 license?

11 A. No.

12 Q. Ms. Longo, are you a high school
13 graduate?

14 A. Yes.

15 Q. When did you graduate from high
16 school?

17 A. 1976.

18 Q. From what high school did you
19 graduate?

20 A. West Islip.

21 Q. Where is that high school
22 located?

23 A. On Higby Lane in West Islip.

24 Q. Did you attend any
25 institutions of higher learning after you

John Lepper v. Village of Babylon
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58

1 Longo

2 graduated high school?

3 A. I just went to SUNY Farmingdale
4 for two years?

5 Q. Anything else?

6 A. No.

7 Q. Where was SUNY Farmingdale
8 located?

9 A. Route 110 in Farmingdale?

10 Q. For what periods did you attend?

11 A. 1976 to 1978.

12 Q. When did you start in 1976 at
13 SUNY Farmingdale?

14 A. When? September.

15 Q. When did you end?

16 A. May, I guess.

17 Q. That was May of what year?

18 A. '78.

19 Q. Did you receive any kind of
20 certificate of attendance?

21 A. An associate's degree.

22 Q. When did you receive your
23 associate's degree?

24 A. May of '78.

25 Q. Were there any focus on that

John Lepper v. Village of Babylon
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1 Longo

2 associate's degree?

3 A. I think business. I don't even
4 remember.

5 Q. Did you go on to get anything
6 other than your associate's degree?

7 A. No.

8 Q. Were you awarded any honors for
9 performance during your period of attendance
10 at SUNY Farmingdale?

11 A. No.

12 Q. Have you participated in any
13 continuing education programs since you
14 graduated from Farmingdale?

15 A. No.

16 Q. Do you operate a vehicle owned by
17 the Village of Babylon?

18 A. No.

19 Q. How many hours are you on duty
20 for the Village of Babylon?

21 A. Thirty-five.

22 Q. Are you paid by the hour by the
23 Village of Babylon?

24 A. No.

25 Q. How long is your workday in the

John Lepper v. Village of Babylon
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1 Longo

2 received from Mr. Fellman in regards to the
3 tree house?

4 A. Say that again.

5 Q. Did you relay, receive on
6 Mr. Fellman's behalf or then give to
7 Mr. Fellman any communications regarding a
8 tree house?

9 A. From anybody?

10 Q. Um-hum.

11 A. I mean, I don't know if I
12 received something and then forwarded it to
13 Mr. Fellman, I can't say for certain. I don't
14 know. I don't know.

15 Q. Why don't you know?

16 A. Because I don't remember.

17 MR. TOSCA: Objection.

18 Q. I just want to be clear.

19 Is it that you don't know or is
20 it that you can't recall?

21 A. I don't recall.

22 Q. As secretary to the building
23 inspector for the Village of Babylon, you
24 would be responsible for relaying messages to
25 Mr. Fellman, correct?

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153

1 Longo

2 A. Yes.

3 Q. Mr. Fellman handled the tree
4 house matter, correct?

5 A. Yes.

6 Q. You don't know if you ever
7 referred a communication to Mr. Fellman
8 regarding the tree house matter?

9 MR. TOSCA: Objection.

10 You can answer over objection.

11 A. I just don't remember. I don't
12 remember dates and when that would have
13 happened. Sometime in the last year.

14 Q. You have all those
15 communications?

16 A. Yes.

17 Q. Because you haven't deleted any
18 of them, correct?

19 A. No.

20 Q. You provided them all to counsel?

21 MR. TOSCA: Objection.

22 Don't answer the question.

23 Q. Have you provided them to a third
24 party?

25 MR. TOSCA: You can answer that.

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154

1 Longo

2 A. I believe so.

3 Q. Who?

4 A. Jean Parker.

5 Q. When you gave it to Jean Parker,
6 what, if anything, did she do with it?

7 A. I have no idea.

8 Q. Those records are maintained in
9 the regular course of business at the Village
10 of Babylon?

11 A. Yes.

12 Q. In fact, when you gave them to
13 Jean Parker, she was employed by the Village
14 of Babylon, correct?

15 A. Yes.

16 Q. Those documents that you gave to
17 Jean Parker, were they numbered in any fashion
18 or sorted in any fashion?

19 A. I don't believe so.

20 Q. How did you give them to
21 Ms. Parker?

22 A. I just made copies of them.

23 Q. How did you make copies?

24 A. I printed them from the computer.

25 Q. Village of Babylon computer,

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Deborah Longo - October 7, 2019

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1 Longo

2 correct?

3 A. Yes.

4 Q. Then gave them to Jean Parker, a
5 Village of Babylon employee?

6 A. Village clerk.

7 Q. She works for the Village of
8 Babylon, correct?

9 A. Yes.

10 Q. What about the Village of Babylon
11 Planning Board, as secretary to the building
12 inspector for the Village of Babylon, have you
13 ever communicated with the Planning Board?

14 A. Yes. I'm secretary to the
15 Planning Board as well.

16 Q. How did you obtain that position?

17 A. It was told to me that that's
18 what I was going to be doing once I started,
19 the Village.

20 Q. When you say told, how did that
21 happen?

22 A. It became part of the job.

23 Q. When you say told to you, how did
24 that happen?

25 MR. TOSCA: Objection.

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1 Longo

2 You can answer.

3 A. I just became part of the job,
4 and by the way, you're secretary to the
5 Planning Board.

6 Q. It wasn't through osmosis, did
7 somebody tell you?

8 MR. TOSCA: Objection.

9 You can answer.

10 A. I guess the mayor, I would say.

11 Q. So the mayor told you it was part
12 of the job, correct?

13 A. I would say yes. I don't recall
14 exactly a conversation about it, it just
15 landed.

16 Q. Has the mayor done anything that
17 just landed in that way that you became the
18 secretary to the Planning Board?

19 A. Suzanne was prior to me and then
20 she moved over to the mayor's office upon
21 Marybeth Wright retiring, and I took over for
22 Suzanne and that was part of her duties so it
23 became part of mine.

24 Q. As secretary to the Planning
25 Board, that's another title that you hold,

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1 Longo

2 correct?

3 A. Yes.

4 Q. What are your job duties in that
5 title?

6 A. I basically do the minutes for
7 them. I prepare their folders if somebody --
8 it's very limited, if they come in and have to
9 go in front of the Planning Board for a
10 driveway or second story balcony or something
11 of that nature, I would keep track of the
12 folders, send the calendar to the Beacon
13 though the clerk's office, they send it to the
14 Beacon because it has to be published, and
15 they write their own letters, and I type the
16 minutes for them and distribute them, that's
17 it.

18 Q. Any other limited duties to which
19 you did not mention in regards to you're being
20 secretary to the Planning Board?

21 A. No.

22 Q. What hours do you operate as
23 secretary to the Planning Board?

24 A. Just within my normal course of
25 day.

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Deborah Longo - October 7, 2019

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1 Longo

2 Q. Are you paid extra for being the
3 secretary to the planning board?

4 A. I get a stipend, I think it's
5 \$1,500 a year.

6 Q. Do you know if the secretary to
7 the planning board is an elected position?

8 A. No, it's an appointed position.

9 Q. Who is responsible of the
10 appointment of the secretary to the planning
11 board of the Village of Babylon?

12 A. The mayor and the Board of
13 Trustees.

14 Q. Was there a vote that made you
15 secretary to the planning board?

16 A. I'm not aware.

17 Q. What, if any, capacity do the
18 trustees have in regards to the appointment of
19 the secretary of the planning board position
20 for the Village of Babylon?

21 A. I don't know the answer to that.

22 Q. Did any trustee tell you that you
23 would be doing the secretary to the planning
24 board position?

25 A. No.

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1 Longo

2 Q. Just the mayor, correct?

3 A. I believe the mayor and Suzanne,
4 but, again, it's a long time ago.

5 Q. Who is on the planning board of
6 the Village of Babylon?

7 A. James Slack, Robert Waters,
8 Richard Tisoro (phonetic), James Cansler
9 (phonetic), Judy Skillen (phonetic), and
10 there's one more. I can't think of their name
11 right now.

12 Q. Six persons.

13 A. Six.

14 Q. As secretary to the planning
15 board of the Village of Babylon, what are you
16 day-to-day duties in regard to that position?

17 A. Taking in any applications,
18 calendaring them, sending the calendar to the
19 clerk's office for publication in the Beacon,
20 and then doing their minutes based on Judy
21 Skillen's handwritten minutes, typing them for
22 her.

23 Q. You say minutes.

24 Are those audio recorded?

25 A. No.

John Lepper v. Village of Babylon
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1 Longo

2 Q. How are the minutes taken?

3 A. She takes them longhand.

4 Q. You convert those longhand notes
5 into actual minutes?

6 A. Yes.

7 Q. Have you ever communicated with
8 Village of Babylon planning board or any of
9 its members?

10 A. Yes. They come up to my office
11 to review the folders, whatever I collected
12 over the course of the month.

13 Q. What are the circumstances under
14 which you have occasion to communicate with
15 those persons?

16 A. They come in to look at the
17 folder to see what's going to be on the
18 calendar.

19 Q. And your office maintains these
20 folders?

21 A. Yes.

22 Q. In the course of your duties as
23 secretary to the building inspector for the
24 Village of Babylon or the secretary to the
25 planning board for the Village of Babylon, do

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1 Longo

2 you have occasion to communicate with the
3 Village of Babylon trustees?

4 A. On occasion, yes.

5 Q. Under what circumstance do you
6 have occasion to communicate with the trustees
7 of the Village of Babylon?

8 A. Any number of things. I mean, I
9 don't have anything specific. It could be
10 anything they ask about.

11 Q. Can you explain anything that
12 they might ask about?

13 A. Something happening in the
14 Village, something happening with a particular
15 job, a vacant house, could be -- it's winter,
16 it could be snow on the sidewalk, could be
17 multiple things.

18 Q. Ms. Longo, where do you live?

19 A. Babylon.

20 Q. Do you live in the Village?

21 A. Yes.

22 Q. Where did you live before that?

23 A. The village of Lindenhurst.

24 Q. Where did you live before the
25 village of Lindenhurst, if anywhere?

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1 Longo

2 A. West Islip.

3 Q. Prior to West Islip, did you live
4 anywhere before that?

5 A. No. In Brooklyn when I was a
6 baby.

7 Q. During the time which you lived
8 in the village of Babylon, have you observed
9 any tree houses?

10 A. No, I have not seen a tree house.

11 Q. You are aware there are more than
12 one tree house in the Village of Babylon?

13 A. I only know of one other.

14 Q. You know of two tree houses; is
15 that right?

16 A. Um-hum.

17 Q. Are you aware there are more than
18 those two tree houses in the village?

19 A. I wouldn't know.

20 Q. Why not?

21 A. I just don't know anything about
22 them if they are.

23 Q. Have your kids ever played in a
24 child's tree house?

25 A. No.

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1 Longo

2 Q. Have you ever seen a child's tree
3 house?

4 A. I've seen pictures, yes.

5 Q. So you're aware that children
6 play in tree houses, right?

7 MR. TOSCA: Objection.

8 A. Not mine.

9 Q. Are you aware of any children
10 playing in the village of Babylon in a tree
11 house?

12 A. No.

13 Q. In the course of your regular
14 professional activities as Village of Babylon
15 secretary to the building inspector, have you
16 ever issued a Certificate of Occupancy for a
17 garage?

18 A. Yes.

19 Q. In the course of your regular
20 professional activities as the secretary to
21 the building inspector for the Village of
22 Babylon, have you ever issued a Certificate of
23 Occupancy for a structure less than 90-square
24 feet?

25 A. For a structure less than

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1 Longo

2 90-square feet, no. I don't think so.

3 Q. In the course of your regular
4 professional activities as the secretary to
5 the building inspector for the Village of
6 Babylon, do you investigate circumstances
7 under which there is a violation of the
8 Village of Babylon Building Department based
9 on a complaint?

10 A. That would be up to the building
11 inspector.

12 Q. Have you ever investigated
13 circumstances under which there is a violation
14 of the Village of Babylon code?

15 A. That would be the building
16 inspector.

17 Q. To be clear, you would not do
18 that, correct?

19 A. Not unless I was instructed by
20 the building inspector.

21 Q. Have you been instructed by the
22 building inspector?

23 A. On occasion, yes.

24 Q. In the course of your
25 professional activities as secretary to the

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1 Longo
2 building inspector for the Village of Babylon,
3 please tell us the circumstances under which
4 you have investigated whether there is a
5 violation of the Village of Babylon code based
6 on a complaint.

7 A. Trying to think of something in
8 particular. We have had people building
9 garages without permits. We have had to send
10 somebody. We have had complaints about a
11 property on Sumpwams Avenue, S-U-M-P-W-A-M-S.
12 I'm trying to think. I can't think of an
13 exact address or something to give you. I've
14 sent him down to Salt Meadow when somebody was
15 gutting a kitchen, that was only a couple
16 months ago, we sent Mr. Fellman down there and
17 I had to send them a notice of violation.

18 Q. In the course of your activities
19 as the secretary to the building inspector for
20 the Village of Babylon, do you investigate
21 circumstances under which there is a violation
22 of the Village of Babylon code based upon a
23 complaint from Kevin Muldowney?

24 A. The only thing that he complained
25 about is this property on Sumpwams to me

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1 Longo

2 directly.

3 Q. Explain your involvement in that
4 investigation?

5 A. They're a New York Rising house,
6 so it's been -- they're involved in a lawsuit,
7 their contractor stole hundreds of thousands
8 of dollars from them, so we have been on top
9 of them, I would say, for property maintenance
10 and trying to work with them to rectify this
11 situation, and by we, I don't mean me, I mean
12 the board.

13 Q. To be clear, the board is
14 involved in that investigation?

15 A. The board of trustees along with
16 the building inspector.

17 Q. In the course of your regular
18 professional activities as the Village of
19 Babylon secretary to the building inspector,
20 do you investigate circumstances under which
21 there is a violation of the Village of Babylon
22 code based upon a complaint by Robyn
23 Silvestri?

24 A. No.

25 Q. In the course of your regular

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1 Longo

2 professional activities as the secretary to
3 the building inspector for the Village of
4 Babylon, do you investigate circumstances
5 under which there is a violation of the
6 Village of Babylon code based on a complaint
7 from Tony Davida?

8 A. Yes.

9 Q. Can you explain the circumstances
10 of that investigation?

11 A. Mr. Lepper's tree house.

12 Q. Tell us what occurred.

13 MR. TOSCA: Objection.

14 You can answer.

15 A. He came in the office one day
16 last year and said there was a platform being
17 built very close to the street in a tree.

18 Q. Are there any other circumstances
19 under you have had opportunity to investigate
20 a complaint brought by Mr. Davida?

21 A. I don't recall.

22 Q. When you say you investigated a
23 complaint about Mr. Lepper's tree house, can
24 you explain on behalf of who you investigated
25 such complaint?

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1 Longo

2 A. Who complained?

3 Q. On behalf of whom did you
4 investigate such complaint?

5 A. He stated it to Mr. Fellman, so
6 when Mr. Fellman left the office, he went past
7 it, is my recollection, he went past the
8 platform.

9 Q. What, if anything, occurred?

10 A. He took a picture, and then he
11 would have either come back to the office or
12 called the office and asked me to send a
13 letter saying he might need a building permit.

14 Q. Anything else?

15 A. At that time, no.

16 Q. What about a later time?

17 A. When there was -- at some point a
18 notice of violation was sent when, I believe
19 there was no answer. I know Mr. Lepper came
20 up at one point and then didn't, I believe
21 didn't follow through, and a notice of
22 violation was sent and then the summonses were
23 written.

24 Q. When you say didn't follow
25 through, can you explain to what you're

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1 Longo

2 referring?

3 A. I'm try to remember. I know that
4 he came up with some drawings, and I said I
5 would show them -- I said I would take them
6 in, give them to the building inspector. The
7 building inspector said he wanted plans, not
8 hand drawn and I had left a message on
9 Mr. Lepper's phone to that effect that plans
10 were required, and we never heard from him
11 again. And then Mr. Fellman asked me to send
12 a violation.

13 Q. What number did you use?

14 A. What phone number? Whatever was
15 one the building permit application, that he
16 gave me with his hand drawing for the tree
17 house.

18 Q. You were responsible for --

19 Withdrawn.

20 You were responsible for issuing
21 that notice of violation?

22 MR. TOSCA: Objection.

23 You can answer.

24 A. No, I wasn't responsible.

25 Mr. Fellman asked me to send it.

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1 Longo

2 Q. Who is responsible?

3 MR. TOSCA: Objection.

4 You can answer.

5 A. Mr. Fellman.

6 Q. Not you, right?

7 MR. TOSCA: Objection.

8 A. No.

9 Q. Who is responsible for making the
10 determination of which you mentioned earlier?

11 A. Mr. Fellman.

12 Q. Not you?

13 MR. TOSCA: Objection.

14 A. No.

15 Q. Is it fair to say that you just
16 follow orders from Mr. Fellman?

17 MR. TOSCA: Objection.

18 A. Yes.

19 Q. When you conducted the
20 investigation involving Mr. Lepper, on whose
21 behalf did you conduct the investigation?

22 A. Say that again.

23 (Whereupon, the record was read
24 by the reporter.)

25 A. I didn't conduct an

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1 Longo

2 investigation. Mr. Fellman did. I have no
3 authority to conduct an investigation.

4 Q. On whose behalf did Mr. Fellman
5 conduct an investigation involving Mr. Lepper?

6 A. The Village of Babylon's behalf.

7 Q. In the course of your regular
8 professional activities as secretary to the
9 building inspector for the Village of Babylon,
10 do you investigate the circumstances under
11 which there is a violation of the Village of
12 Babylon code based upon a complaint from Ralph
13 Scordino?

14 A. Yes.

15 Q. Under what circumstances?

16 A. He might drive around and see
17 construction being done and call me and ask if
18 there is a permit on it.

19 Q. What, if anything, would you do?

20 A. Look in the file and see if there
21 was a permit.

22 Q. At whose direction would you do
23 that?

24 A. On the request of the mayor.

25 Q. In other words, you would act

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1 Longo

2 pursuant to the mayor speaking, correct?

3 A. If he asked me about a permit or
4 lack thereof, yes.

5 Q. Do you recall the last time the
6 mayor did that?

7 A. Possibly within the last month or
8 two. I don't remember. I can't give you an
9 exact address.

10 Q. What about before that month or
11 two?

12 A. Could have been a month or two
13 before that as well.

14 Q. Is it that you don't know or you
15 can't recall or something else?

16 A. I don't know. I can't recall an
17 exact address or time. The mayor is active
18 and will ask if there is a permit on things as
19 he see them driving around the village.

20 Q. Is there anything that would
21 refresh your recollection?

22 A. No. No.

23 Q. As you sit here today, you can't
24 recall if there's anything that would refresh
25 your recollection?

EXHIBIT “Q”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Plaintiffs,

- against -

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Docket No.: 2:18-cv-07011
JMA, AYS

AFFIDAVIT

**Judge: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, A., U.S.M.J.)**

Stephen Fellman, being duly sworn deposes and says:

1. I make this affidavit in support of the motions to dismiss the complaint of the plaintiffs in this matter.

2. I am the Village of Babylon Building Inspector and have served as building inspector since 1991.

3. I am fully familiar with the facts and circumstances of this matter involving a building that was erected in 2018 by John Lepper in a tree on his property located at 59 Cockenoe Avenue in the Village of Babylon.

4. After I was notified in May 2018 of the commencement of construction of the building, which Mr. Lepper describes as a treehouse, I contacted Mr. Lepper and advised him in writing that he may need a permit for what appeared when I first observed the construction to be the platform to a building structure.

5. As construction continued, I warned Mr. Lepper in writing that he required a permit for the building.

6. He provided a permit application in late May 2018. Even though he was not issued a permit on the application, he continued to build without a permit resulting in a set of tickets in July and August of 2018 and again in October 2018 for violating Village Code. The basis for my issuing the tickets was his continued violation of village code by erecting a building without obtaining a permit. Specifically, Section 365-26 of the Babylon Village Code requires a permit for the construction of a building such as the tree house.

7. In late July 2018, Mr. Lepper met with me in Village Hall, and I explained to him that a permit was required before he could continue building. Because of the proximity of the building to the property line, it was apparent that he required a variance. I told him to submit signed and sealed plans and a survey prepared by a licensed surveyor to complete the application. I needed to see plans by a licensed professional providing detail of the construction to assess design safety. Mr. Lepper still did not comply and to this day has not completed the application. In order to appear before the Zoning Board of Appeals to obtain a variance, he would need plans by a licensed professional and a survey by a licensed surveyor.

8. At our meeting in July 2018, Mr. Lepper told me about a hypodermic needle he found on the property. It was strange that he brought the subject up and I advised him that he should consult with the police. The alleged finding had nothing to do with the building permit application.

9. All actions undertaken by the Village of Babylon as to the treehouse at the Lepper property were to promote safety and compliance with Village codes. Any drug problems alleged by Mr. Lepper bear no relation to the Village's enforcement of Village Code and Mr. Lepper's claimed disclosure of any issues with illegal narcotics was not related to the enforcement of the building code.

10. I am advised that plaintiffs allege unequal treatment and refer to a prior application from the Baldauf residence. That application for the described treehouse was not approved initially by the building department and the Baldauf family made application to the Zoning Board of Appeals. The Baldaufs were required to proceed through the same approval process as Mr. Lepper is subject to. They provided signed and sealed plans by a licensed professional and a survey from a licensed surveyor. In fact, in order to obtain a permit, the Baldaufs were required to abide the setback provisions of the code as determined by the Zoning Board of Appeals. There was no unequal treatment.

11. In connection with information obtained from contentions made in this lawsuit, I learned of building structures in backyards at various addresses. Those structures are very different from the treehouse of John Lepper. Of significant difference is the fact that none of the structures which I required permit applications and granted permits violated the setback requirements of the Village of Babylon Code. They did not pose a danger to the public since they did not abut the street or the public walkway. Those structures did not require a variance to

be decided by the Zoning Board of Appeals. Those structures are different in size and height above the ground. They are not like kind structures.

12. I have learned of a report by Joseph Danatzko, P.E., who inspected the tree house at the Lepper residence. I have never inspected the interior of the tree house. Based on the findings of Mr. Danatzko, no permit could ever be issued because the structure is not safe. When I testified to the safety of the tree house, I relied on a statement of plaintiff's retained professional engineer. It turns out that plaintiff's retained professional expert was limited in his review. The safety was limited to the ability of the tree house to remain structurally intact. However, by July 31, 2020, Mr. Danatzko noted signs of structural compromise, and dangers inherent to the very foundation of the tree house and interior electrical currents. Given these violations of safety protocols, the tree house could never be issued a permit.


13. Mr. Lepper's request for a permit must adhere to both safety standards and comply with the Village's zoning ordinances in order to be eligible for a permit. The request for a permit should precede the building of the structure. However, Mr. Lepper wrongfully built the tree house without first making application for a permit. But for the fact that the tree house violated the setback requirements and assuming that Mr. Lepper met the applicable standards for safety, I would have issued a permit.

14. I had issued permits approximately seven years before this incident when Mr. and Ms. Lepper constructed additions to their property in conformance with code. Neither I nor anyone in the Village harbored any reason to deny a permit for the treehouse other than to enforce the code. It was apparent that the treehouse required a variance since it was not setback from the property line in conformance with the Village Code. Mr. Lepper needed approval from the Zoning Board of Appeals. Unlike the Baldauf applicants, Mr. Lepper refused to proceed

with making application to the Zoning Board of Appeals.

15. I am told that Mr. Lepper complained of reports made about him to the fire department and the police department. I have not made any reports or complaints concerning Mr. Lepper to the fire department or to the police department. I was not consulted about making any such reports and no one has requested that I participate or make any decisions about reporting or complaining about Mr. Lepper to the police department or the fire department or any other agency.

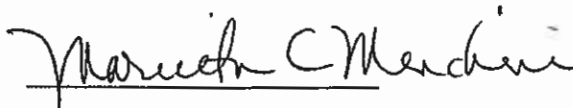
16. I am advised that a complaint was filed by John Lepper in January 2021. No process server and no one on behalf of John Lepper has handed me or served me with a summons or complaint in 2021 with reference to this matter. I have not waived service of the summons and complaint.



Stephen Fellman

Sworn to before me this

22 day of June 2021.



NOTARY PUBLIC
MARIETTA C MENCHINI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6239065
Qualified in Suffolk County
My Commission Expires April 18, 2023

EXHIBIT “R”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011 JFB-GRB

Plaintiffs,

ATTORNEY AFFIRMATION

- against -

VILLAGE OF BABYLON; and,
KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

**Justice: Honorable
Joan M. Azrack (U.S.D.J.)
(Shields Anne Y., M.J.)**

Defendants.

-----X
Gerard Glass, an attorney admitted to practice before this Court, and the Courts of
the State of New York, hereby affirms and declares under penalty of perjury as follows:

1. I am the sole principal of the law office Gerard Glass & Associates, P.C. located at 72 East Main Street, Babylon, New York. I am a named defendant in this action.
2. I have served as Village Attorney by appointment of the Board of Trustees of the Village of Babylon (alternatively referred as "the Village") from February 13, 2018 to April 5, 2021. I had served as the Village prosecutor for entire time that I had been Village Attorney. The Village retained to provide services in connection with the tree house litigation and retained me to monitor and provide assistance on behalf of the Village in the instant matter. I was

compensated for those services.

3. I submit this affirmation in support of the defendants' motion for summary judgment and motion to dismiss presented by the Defendants' attorneys.

4. I submit that this Honorable Court should grant the motion to dismiss the complaint, including dismissal of each and every cause of action and request for relief set forth in the plaintiffs' complaints and amended complaints.

5. I make this affirmation based on my personal knowledge of my activity and my role prosecuting tickets that were issued against John Lepper in Village Court of the Village of Babylon, a justice court in the State of New York. I also have knowledge based on my discussions with Cory Morris and John Lepper. All discussions and interactions with Cory Morris and John Lepper were undertaken in my role as Village Attorney and in my role prosecuting the tickets on behalf of the Village of Babylon. I visited the property at 59 Cockenoe Avenue in the Village of Babylon on July 31, 2020, during a site inspection attended by Stephen Fellman and Eric P. Tosca, when Joseph Danatzko, P.E. inspected the tree house. Mr. Danatzko inspected the interior of the tree house.

6. My first interaction with Cory Morris was when in 2018 he showed up at my office without an appointment and dropped the original complaint on my desk. He advised that "This all goes away" if the Village of Babylon allows the tree house. Despite Mr. Morris' *quid pro quo* representation, the Village was not in a position to afford special preference to Mr. Lepper to build a tree house in violation of applicable building and zoning codes to the exclusion of other residents in the Village.

7. No tickets were ever issued to Noelle Lepper or the Lepper children. No prosecution was ever undertaken against anyone in connection with the tree house except John

Lepper.

8. I was called upon to prosecute tickets issued by Stephen Fellman in his role as building inspector.

9. Tickets were prosecuted and heard in a trial before Honorable Judge John Rafter, Village Justice. My sole role in the prosecution of the tickets was as prosecutor on behalf of the Village. Stephen Fellman testified about the tickets that he issued in connection with the tree house.

10. The tickets issued were based on Mr. Lepper's constructing a tree house without a permit and in violation of the Babylon Village Code. The applicable sections of the Village Code have never been declared unconstitutional. I did not think, and never told anyone that I thought, that the tickets were insufficient to serve as a basis to prosecute. The comments alleged in the complaint purportedly found in a *Newsday* article refer to my thinking that after the appeal was filed that there may be a colorable basis to challenge the tickets on facial sufficiency. Before the appeal, no issue was raised by Mr. Lepper concerning the facial sufficiency of the tickets that were heard by Judge Rafter. Mr. Lepper had the opportunity to obtain counsel to represent him. In conferences with John Lepper, I recommended that he obtain counsel. Village Justice Rafter also advised him to obtain counsel. However, he did not seek counsel and decided to go forward representing himself.

11. John Lepper's tree house required a permit that could not be issued without application to the Zoning Board of Appeals because the tree house abutted the property line with Wampum Avenue in violation of the Village zoning code setback provisions.

12. John Lepper failed to exhaust his administrative remedies. He failed to submit the application with signed and sealed plans and a survey by a licensed surveyor so that he could

apply for a variance. Mr. Lepper also did not go to the Zoning Board of Appeals to contest the Village of Babylon building department's refusal to issue a permit.

13. On September 18, 2018, a trial was held on tickets issued to John Lepper related to the tree house built without a permit. On October 17, 2018, Honorable Judge Rafter issued a decision finding Mr. Lepper guilty of charges and assessed fines amounting to approximately \$500 for ticket numbers 494213 and 494214 that had been issued in July 2018, and ticket numbers 494215 and 494222 that had been issued to Mr. Lepper in August 2018.

14. Tickets issued on October 20, 2018 and October 31, 2018 to John Lepper have not been adjudicated and there is a pending motion in the Village Court related to those tickets.

15. John Lepper appealed the order of October 17, 2018 regarding the first series of tickets. The Appellate Term of the Supreme Court in the Second Department issued an order finding that the tickets were procedurally defective inasmuch as the Appellate Term found the tickets to be facially deficient. *See People v. Lepper (John)*, 66 Misc. 3d 133(A), 120 N.Y.S.3d 563 (App. Term 2019). I thought the tickets were sufficient to charge Mr. Lepper as did the trial judge. However, the Appellate Term disagreed. The decision of the Appellate Term did not contest the validity of the Village code provisions and did not pass upon the constitutionality of the code provisions. There is no question that Mr. Lepper constructed the tree house without a permit. There was probable cause for all tickets issued to John Lepper.

16. John Lepper argued that the code provisions did not apply to his tree house, despite that he applied for a permit.

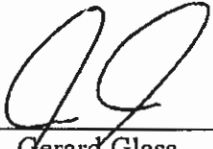
17. I was not personally served with the complaint filed with this Honorable Court in January 2021 or any amended complaint thereafter. Mr. Lepper had come into my office, and he handed a summons and complaint to someone in my office at 72 East Main Street in January

2021. No further service was made in connection with this complaint. I have not and do not waive service of the summons and complaint.

18. The complaint made allegations of reports or complaints to the police department and his employer the New York City Fire Department. I did not make any report or complaint to the police department or fire department about Mr. Lepper and have not made any report or complaint to any agency in connection to the allegations in the complaint. Someone from the New York City Fire Department called me and advised that the fire department received a complaint and asked for information. I did not participate and was not asked to participate in any hearing regarding the complaint.

WHEREFORE, it is respectfully submitted that the motions of the Defendants in their entirety, together with such other and further relief as to this Court may deem just and proper.

Dated: Mineola, New York
June 23, 2021



Gerard Glass

EXHIBIT “S”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011
JMA, AYS

Plaintiffs,

AFFIDAVIT

- against -

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

**Judge: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, A., U.S.M.J.)**

Defendants.

-----X
STATE OF NEW YORK)
COUNTY OF *Suffolk*) ss.:

Suzanne Schettino being duly sworn deposes and says:

1. I am a defendant in this litigation improperly designated as Department of Public Works.
2. I make this affidavit in support of the motions to dismiss the complaint.

3. I began employment with Village of Babylon in 1997. From 2008 until my last day of employment with the Village of Babylon, I served as Secretary to the Mayor. My last date of employment with the Village of Babylon was April 29, 2021.

4. I have held no office with the Village of Babylon.

5. I am familiar with the claims of the Plaintiffs and make this affidavit based on personal knowledge of my activity related to the subject building structure on the property of John and Noelle Lepper that they call a tree house.

6. My duties at the Village of Babylon were administrative in nature. I do not make and have not made decisions related to the tree house or enforcement or prosecution of any matters related to the Plaintiffs' claims.

7. My duties have been to handle calls and correspondences for the Mayor. However, responses to any calls and correspondences are decided by the Mayor.

8. Other than transmitting any correspondences with the Mayor's office between the Mayor or the Trustees, I have not been engaged in deciding how to respond to correspondences between any of the Plaintiffs and the Village of Babylon.

9. I understand that the Village of Babylon sought to enforce codes related to the tree house alleged in the complaint. I know of no wrongful acts or omissions on the part of any defendant in this case as alleged in the complaint of the Plaintiffs.

10. I am advised that Mr. Lepper complained of reports made about him to the fire department and the police department. I have not made any reports or complaints concerning Mr. Lepper to the fire department or to the police department. I was not consulted about making

any such reports and no one has requested that I participate or make any decisions about reporting or complaining about Mr. Lepper to the police department or the fire department or any other agency.

11. I know of a summons and complaint that John Lepper filed in January 2021. No process server and no one on behalf of John Lepper has handed me or served me with a summons or complaint in 2020 or 2021 with reference to this matter. I have not waived service of the summons and complaint. The summons and complaint had come to my desk in January 2021 after Mr. Lepper handed the summons and complaint to one of the employees of the Village outside the Village Hall Building.


Suzanne Schettino

Sworn to before me this

22 day of June 2021.



NOTARY PUBLIC
MARIETTA C MENCHINI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6239066
Qualified in Suffolk County
My Commission Expires April 18, 2023

EXHIBIT “T”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011
JMA, AYS

Plaintiffs,

AFFIDAVIT

- against -

**Judge: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, A., U.S.M.J.)**

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Kevin Muldowney, being duly sworn deposes and says:

1. I am a defendant in this litigation and make this affidavit in support of the motions to dismiss the complaint.
2. My position with the Village of Babylon since and for all times mentioned in the amended complaint of the Plaintiffs has been a Trustee and Deputy Mayor for the Village of Babylon until September 1, 2020, when I no longer served as Trustee or Deputy Mayor and have held no position with the Village of Babylon since September 1, 2020.

3. I have held no other office or position with the Village of Babylon other than my positions as Deputy Mayor and Trustee. I am familiar with the claims of the Plaintiffs and make this affidavit based on personal knowledge of my activity related to the subject building structure on the property of John and Noelle Lepper that they call a tree house.

4. I have had no discussion with John or Noelle Lepper about the tree house or any matters related to the tree house.

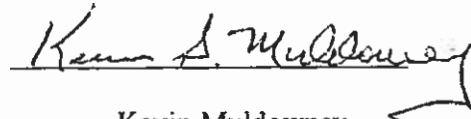
5. In my role as Trustee and Deputy Mayor, I was kept advised of the status of the matter involving John Lepper by our counsel Gerard Glass and by Stephen Fellman.

6. All action undertaken by the Village of Babylon through the building department or through the prosecution of tickets undertaken by the attorney for the Village of Babylon was to enforce codes related to the tree house alleged in the complaint. I have been advised that some tickets issued to Mr. Lepper were dismissed on appeal on procedural grounds. I know of no wrongful acts or omissions on the part of any defendant in this case as alleged in the complaint of the Plaintiffs.

7. I am told that Mr. Lepper complained of reports made about him to the fire department and the police department. I have not made any reports or complaints concerning Mr. Lepper to the fire department or to the police department. I was not consulted about making any such reports and no one has requested that I participate or make any decisions about reporting or complaining about Mr. Lepper to the police department or the fire department or any other agency.

8. I am advised that a complaint was filed by John Lepper in January 2021. No process server and no one on behalf of John Lepper has handed me or served me with a summons or complaint in 2021 with reference to this matter. I have not waived service of the

summons and complaint.


Kevin Muldowney

Sworn to before me this

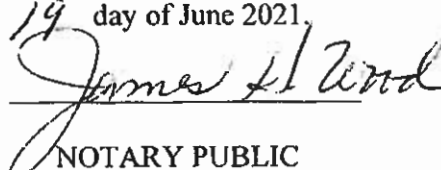
19 day of June 2021,

NOTARY PUBLIC
JAMES H. WOOD
Notary Public, State of New York
Suffolk County No. 4767467
Term Expires March 23, 19____
1/31/2023

EXHIBIT “U”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011
JMA, AYS

Plaintiffs,

AFFIDAVIT

- against -

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

**Judge: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, A., U.S.M.J.)**

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Deborah Longo being duly sworn deposes and says:

1. I am a defendant in this litigation improperly designated as Planning Board,

Village of Babylon. I make this affidavit in support of the motions to dismiss the complaint.

2. My position with the Village of Babylon since 2008 and for all times mentioned in
the amended complaint of the Plaintiffs has been Secretary to the Planning Board, except I ended
my employment with the Village of Babylon on August 1, 2020.

3. I have held no office with the Village of Babylon.

4. I am familiar with the claims of the Plaintiffs and make this affidavit based on personal knowledge of my activity related to the subject building structure on the property of John and Noelle Lepper that they call a tree house.

5. My duties at the Village of Babylon are administrative in nature. I do not make and have not made decisions related to the tree house or enforcement or prosecution of any matters related to the Plaintiffs' claims.

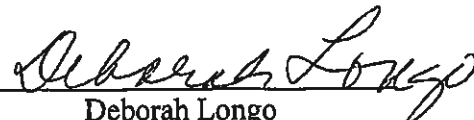
6. My duties included taking applications for permits at the front desk of the Building Department. I had taken an application for a permit from John Lepper related to a tree house he was building on his property. I advised Mr. Lepper at that time that I would refer the application to the building inspector. I made no representation that the permit would be issued. My job duties did not include decisions on permit applications and did not include decisions whether permits should or should not be issued. My role was limited to taking Mr. Lepper's application. I forwarded the application to building inspector Stephen Fellman for review. I was not involved in the decision making process as to the issuance of a permit or any action undertaken to enforce the Village of Babylon codes.

7. I was not engaged in deciding how to respond to correspondences between any of the Plaintiffs and the Village of Babylon.

8. I understand that the Village of Babylon sought to enforce codes related to the tree house alleged in the complaint. I know of no wrongful acts or omissions on the part of any defendant in this case as alleged in the complaint of the Plaintiffs.

9. I am told that Mr. Lepper complained of reports made about him to the fire department and the police department. I have not made any reports or complaints concerning Mr. Lepper to the fire department or to the police department. I was not consulted about making any such reports and no one has requested that I participate or make any decisions about reporting or complaining about Mr. Lepper to the police department or the fire department or any other agency.

10. I am advised that a complaint was filed by John Lepper in December 2020. No process server and no one on behalf of John Lepper has handed me or served me with a summons or complaint in 2020 or 2021 with reference to this matter. I have not waived service of the summons and complaint.


Deborah Longo

Sworn to before me this

22 day of June 2021.



NOTARY PUBLIC

MARIETTA C MENCHINI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6239065
Qualified in Suffolk County
My Commission Expires April 18, 2023

EXHIBIT “V”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011
JMA, AYS

Plaintiffs,

AFFIDAVIT

- against -

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

**Judge: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, A., U.S.M.J.)**

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Anthony Davida, being duly sworn deposes and says:

1. I am a defendant in this litigation and make this affidavit in support of the motion
for summary judgment dismissing the complaint.

2, My position with the Village of Babylon since November 8, 2002 and for all
times mentioned in the amended complaint of the Plaintiffs has been a Trustee for the Village of
Babylon. Effective December 31, 2020, I no longer serve as Trustee and hold no position with
the Village of Babylon.

3, I have held no other office or position with the Village of Babylon.

I am familiar with the claims of the Plaintiffs and make this affidavit based on personal knowledge of my activity related to the subject building structure on the property of John and Noelle Lepper that they call a tree house.

4, In May 2018, I observed the beginning construction of what I later learned was intended to be a tree house at 59 Cockenoe Avenue in the Village of Babylon, New York. After observing the condition, I notified building inspector Stephen Fellman of my observation. I left it to Mr. Fellman to decide whether further action was necessary. I did not issue any tickets or the prosecution of any tickets. Any stop work order or enforcement activity is handled by the building department and code enforcement officer of the Village of Babylon. I have had no discussions with the plaintiffs about the tree house or any matters related to the tree house.

5. In my role as Trustee, I was kept advised of the status of the matter involving John Lepper by our counsel Gerard Glass and by Stephen Fellman.

6. All action undertaken by the Village of Babylon through the building department or through the prosecution of tickets undertaken by the attorney for the Village of Babylon was to enforce codes related to the tree house alleged in the complaint. I was told that some tickets were dismissed on appeal on procedural grounds. I know of no wrongful acts or omissions on the part of any defendant in this case as alleged in the complaint of the Plaintiffs.

7. I am told that Mr. Lepper complained of reports made about him to the fire department and the police department. I have not made any reports or complaints concerning Mr. Lepper to the fire department or to the police department. I was not consulted about making any such reports and no one has requested that I participate or make any decisions about reporting or complaining about Mr. Lepper to the police department or the fire department or any

other agency.

8. I am advised that a complaint was filed by John Lepper in January 2021. No process server and no one on behalf of John Lepper has handed me or served me with a summons or complaint in 2021 with reference to this matter. I have not waived service of the summons and complaint.



Anthony Davida

Sworn to before me this

21 day of June 2021.



NOTARY PUBLIC
MARIETTA C MENCHINI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6239068
Qualified in Suffolk County
My Commission Expires April 18, 2023

EXHIBIT “W”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Index No.: 2:18-cv-07011 JMA/AYS

Plaintiffs,

AFFIDAVIT

- against -

**Justice: Honorable
Joan M. Azrack, U.S.D.J.**

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

Joseph M. Danatzko, P.E., being duly sworn, deposes and says:

1. I am a duly licensed professional engineer in the State of New York. I attach my *curriculum vitae* to this affidavit. I am employed by Affiliated Engineering Laboratories, Inc. at 777 New Durham Road, Edison, New Jersey 08817. Details of my experience and education are provided in my *curriculum vitae*, attached as Exhibit "A". This affidavit is based upon my 7/31/2020 site inspection, professional knowledge, education, training, licensure, experience, technical research and materials regularly relied upon in the field of engineering and building inspection.

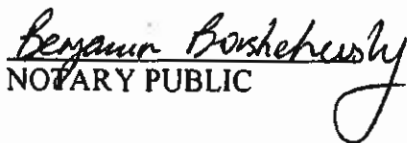
2. Following my inspection of the building structure (i.e., the "treehouse") at 59 Cockenoe Avneue in Babylon Village, New York on 7/31/2020, I authored a letter to Eric P. Tosca Esq. and Mr. Stephen Fellman (the Village of Babylon New York Building Inspector). See attached Exhibit "B".

3. After my site inspection and after review of documentary material, I authored a report dated December 28, 2020, with attached photographs taken by me at the time of my site inspection on 7/31/2020 attached as Exhibit "C". The contents of the report reflect the documentary material I reviewed as well as my findings and opinions after review of the documentary material and my inspection of 7/31/2020.

4. The documentary material is what I read. My measurements included in the report are true and accurate. My review of codes/standards are contained in the report attached as Exhibit C, and my technical research/references, as well as my explanation of the various code provisions, is true and accurate. My findings, the details of my inspection, my calculations and my opinions are true to a reasonable degree of engineering certainty.


Joseph M. Danatzko, P.E.

Sworn to before me this
27th day of May, 2021.


NOTARY PUBLIC

BENJAMIN A BORSHCHEVSKY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01806403783
Qualified in Richmond County
My Commission Expires 02-03-2024

EXHIBIT “A”

AFFILIATED ENGINEERING LABORATORIES, INC.
Engineering Consultants

777 New Durham Road
Edison, NJ 08817

Phone: (732) 429-1200

Fax: (732) 429-1201

Resume: JOSEPH M. DANATZKO

Education: Bachelor of Science – Civil Engineering
Lafayette College, Easton, PA, 2007

Master of Science – Civil/Structural Engineering
The Ohio State University, Columbus, OH, 2010

Professional: Professional Engineer – New Jersey License No. 24GE04963800
Professional Engineer – New York License No. 092836
Professional Engineer – Pennsylvania License No. PE081326
Professional Engineer – North Carolina Certificate No. 047419
Building Inspector – New Jersey License No. 010903
Residential and Small Commercial Specialist
Industrial and Commercial Specialist
Mechanical Inspector – 1 and 2 Family
Residential and Commercial Building/Mechanical Inspector –
Commonwealth of Pennsylvania Certification No. 05933
ICC Certified Residential Building Inspector
ICC Certified Residential Mechanical Inspector
ICC Certified Commercial Building Inspector
ICC Certified Commercial Mechanical Inspector
Member – American Society of Civil Engineers (ASCE)
Member – American Society of Civil Engineers (ASCE) – Structural
Engineering Institute (SEI)
Member – Snow and Ice Management Association (SIMA)

Continuing Education: Structural Forensic Engineering
Underpinning and Strengthening of Foundations
Machine Foundations
Analysis and Design of Liquid Structures
Evaluation of Reinforced Concrete Structures
Epoxy Grouts in Industrial Environments
High Strength Concrete and Steel Reinforcement
Shear Wall Systems
Portland Limestone Cements

JOSEPH M. DANATZKO

-2-

Blast Testing for Structural Performance
Wooden Truss Design
Residential Decks/Balconies/Roofs
Residential Hurricane Tie Systems
Occupational Safety & Health Administration (OSHA) Courses:
 OSHA 510: Occupational Safety & Health for the
 Construction Industry
 OSHA 7505: Accident Investigations
 OSHA 30-hr Construction Outreach Training
 OSHA 2055: Cranes in Construction
 OSHA 2264: Permit-Required Confined Space Entry
 OSHA 3015: Excavation, Trenching and Soil Mechanics
 OSHA 3115: Fall Protection
 OSHA 7500: Introduction to Safety & Health Management
 OSHA: Expectations and Accountability for Managing Fall Hazards
 in Multiple Employer Construction Sites
ASTM Workshop on Multifactorial Analysis of Slip and Fall Events
Various Continuing Education Courses in building code implementation,
construction safety and environmental hazards

**Professional
Experience:**

Pennsylvania Department of Transportation, Allentown, PA
Civil Engineering Intern

Assistant to Pennsylvania D.O.T. Project Supervisor on roadway repaving projects with responsibilities including: project inspector; budget management and project tracking; field inspections of paving/resurfacing projects and adjacent structures; record keeping; monitoring of contractor procedures for compliance with contract requirements; safety inspections.

Perini Corporation- Civil Division, Newark, NJ
Civil Engineering Intern

Assistant to Project Manager and Construction Manager on a bridge deck reconstruction project with responsibilities including: field inspections of structural members and installation; supervision of construction work; safety inspections; review of shop drawings and as-built calculations; technical project submissions.

Bohler Engineering, Warren, NJ
Design Engineering Intern

Design Engineer supporting Project Manager for commercial and residential subdivision site design with responsibilities including: site

JOSEPH M. DANATZKO

-3-

inspections including evaluation of adjacent structures; production of conceptual designs and site plan drawings; design of parking areas, drive aisles and walkways; stormwater management and runoff calculations; site grading plans; design of retention, detention and underground stormwater management systems; sizing of piping and outlet structures; design of on-site utilities and lighting; review of township and state codes.

Washington Group International, Princeton, NJ
Engineer I - Nuclear Division Structural Group

Design Engineer for nuclear power plant upgrades/modifications with responsibilities including: structural design and analysis including affects from adjacent construction; field inspections of structural systems and constructability reviews; design of concrete and steel structures; analysis of existing steel and concrete structures; development and review of construction drawings; analysis of structural elements through calculations and computer-aided-design (CAD); production and review of detailed engineering calculations; development of calculation standards and training of employees regarding American Institute of Steel Construction (AISC) specifications.

CDI Corporation, Princeton, NJ
Structural Engineer

Consulting Engineer for an upgrade project at a Florida Power and Light facility involving trolley cranes. Responsibilities included: design, analysis and qualification of new, modified and existing concrete and steel structures; assessment and evaluation of adjacent structures relative to proposed construction; development and review of construction drawings; detailed design of steel and concrete connections; review of steel and concrete calculations; AISC and ACI code compliance; inspections and constructability reviews; ensuring conformance with Independent Spent Fuel Storage Installation (ISFSI) requirements per NRC guidelines.

Inglese Architecture and Engineer, East Rutherford, NJ
Project Drafter/Structural Engineer

Project Drafter/Structural Engineer supporting one-, two and multi-family residential construction projects including commercial structures and mixed-use residential/commercial with responsibilities including: site inspections including field constructability reviews and assessment of exiting structures; structural investigations involving building rehabilitation and demolition; generation of construction drawing packages for construction, planning board submission and bid; conceptual building

JOSEPH M. DANATZKO

-4-

design; generation and revision of detail drawings; design of stormwater management systems, including retention and detention basins; design of stormwater outlet structures; design and specification of structural members and materials; design and analysis of steel, concrete and timber structures; design of parking structures and on-site parking; design of driveways, drive aisles and walkways; design and specification of structural shear-wall systems; design and evaluation of retaining wall systems; design and revision of heating, ventilation and air-conditioning (HVAC) systems, plumbing systems, electrical systems, lighting plans, drainage systems and grading; analysis of designs for United State Green Building Council LEED rating.

The Ohio State University, Columbus, OH
Graduate Research Assistant/Student Project Team Advisor

Conducted research in the field of Sustainable Structural Design and Engineering; performed research related to prestressed and precast concrete design; research into asphalt pavement designs, the impact of structural vibrations of structural elements and progressive structural collapse; served as advisor and mentor to Student Project Teams.

The Spear Group, Norcross, GA
Consulting Civil/Design Engineer

Consultant under contract to Public Service Electric & Gas and Consolidated Edison, Inc.

Public Service Electric & Gas, Newark, NJ

Responsibilities included: site inspections involving constructability reviews and assessment of adjacent structures; field assessment related to emergency investigations and storm damage response; conceptual designs; field engineering; design of concrete foundations, piling and steel structures for electrical equipment; design and analysis of A-frames associated with electrical equipment; design and review of submittal packages for new and existing structures; generation of structural details and drawings; development of design aids and programs; design of drainage systems and grading; design and review related to spill prevention countermeasure and containment plans.

Consolidated Edison, Inc., New York, NY

Responsibilities included: site inspections involving constructability

JOSEPH M. DANATZKO

-5-

reviews and assessment of adjacent structures; field assessment related to emergency investigations and storm damage response; development of spill prevention countermeasures and containment in new designs and plans; transformer replacements and upgrades throughout the New York metropolitan area, review of in-house and vendor submittal packages.

Affiliated Engineering Laboratories, Inc., Edison, NJ
Engineering Consultant

Forensic engineering investigation and evaluation of design and construction elements related to civil, structural and safety engineering, including: walkways, stairways, roadways, site improvements and building construction. Engineering and safety analyses related to building code compliance and accident evaluation cause and origin analysis.

EXHIBIT “B”

AFFILIATED ENGINEERING LABORATORIES, INC.
Engineering Consultants

Physical Location:
777 New Durham Road
Edison, NJ 08817

P.O. Box 3300
Edison, NJ 08818-3300

Phone (732) 429-1200
Fax (732) 429-1201
www.affiliatedinc.net

July 31, 2020

Kelly, Rode & Kelly, LLP
330 Old Country Road
Suite 305
Mineola, New York 11501-4143

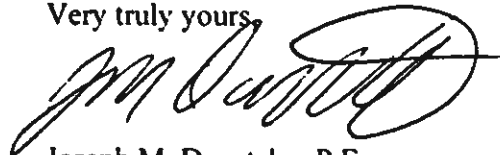
Attention: Eric P. Tosca, Esq and Stephen Fellman (Village of Babylon Building Inspector)

Re: Lepper v. Village of Babylon, et al.
Firm File No. PDG/EPT 148530-752
Our File No. W-1539

Dear Mr. Tosca and Mr. Fellman:

During my site inspection on Friday, July 31, 2020 (7/31/2020), I evaluated the subject structure (i.e. the "treehouse") located on the property at 59 Cockenoe Avenue, Babylon, New York related to the captioned matter. During my inspection I observed that the subject structure appeared to be an unsafe structure, a structure unfit for human occupancy, contain unsafe equipment, and may present an imminent danger to life-safety in accordance with Section 116 of the 2015 International Building Code as adopted by the State of New York and amended by Section 101.2.6.7 of the New York State Building Standards and Codes 2017 Uniform Code Supplement. Please let this letter serve as notice that the above may exist at the referenced property. Additionally, pursuant to your direction, it is my understanding this letter and its contents will be transmitted as soon as possible to the appropriate representative/agent of Mr. John Lepper so that Mr. Lepper might be informed that: my inspection revealed the above; the subject structure should not be occupied and/or employed for use. Please confirm in writing that this letter will be transmitted to the representative/agent of Mr. Lepper.

Very truly yours,



Joseph M. Danatzko, P.E.
Engineering Consultant

EXHIBIT “C”

AFFILIATED ENGINEERING LABORATORIES, INC.
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December 28, 2020

Kelly, Rode & Kelly, LLP
330 Old Country Road
Suite 305
Mineola, New York 11501-4143

Attention: Eric P. Tosca, Esq.

Re: Lepper v. Village of Babylon, et al.
Our File No. W-1539

Dear Mr. Tosca:

In accordance with your request, the writer traveled to and conducted an inspection at the property located at 59 Cockenoe Avenue in Babylon, New York [Suffolk County New York Tax Map Parcel ID: 0102-004.00-01.00-100.00] on 7/31/2020. The purpose of the writer's inspection was to evaluate a structure (i.e. a "treehouse") at that location. Representative photographs numbered 1 through 55, taken during the writer's inspection, have been included herewith for information and general reference. The subject property was located on the northwest corner of the intersection of Cockenoe Avenue and Wampum Road. The property fronted Cockenoe Avenue, which ran in a general north-south direction, and all directions in this report are as viewed looking at the property from that roadway. In addition to the site inspection the writer reviewed the following file material relative to the captioned matter [all legal documents are understood to have been provided relative to United States District Court for the Eastern District of New York Civil Action No. 2:18-cv-07011 JFB-GRB]:

- Amended Verified Complaint, dated 11/16/2018
- "*Preliminary Injunction – Copy of Architect's Report*" Letter with attachments by Cory H. Morris, Esq., dated 2/20/2019
- "*Treehouse*" Letter by James R. Brown, Ph.D., P.E., dated 3/1/2019
- Deposition Testimony of John Lepper [Redacted] with Exhibits A-J and L-N, dated 6/27/2019
- Deposition Testimony of Gerard Glass, dated 7/5/2019
- Deposition Testimony of Stephen Fellman, dated 9/4/2019
- Plaintiffs Supplemental Disclosures, dated 2/5/2020

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- Google Earth Historical Aerial and Streetview Imagery of the subject property
- Tax Assessment Records and Property Information relative to the subject property

The following represents the writer's understandings, comments and opinions relative to the captioned matter, to a reasonable degree of engineering certainty:

PROPERTY DESCRIPTION

The subject property contained a 2,314-square-foot, two-story, colonial-style, single-family dwelling located on a 50-foot by 150-foot rectangular lot (Photos 1–2). The exterior of the residence was finished with vinyl siding and contained asphalt shingle gable roofs throughout. The front of the property contained a grass/landscaped area and abutted Cockenoe Avenue. The left side of the property contained a grass/landscaped area and abutted a neighboring property (Photo 3). The right side of the property contained a grass/landscaped area and abutted Wampum Road (Photos 4–5). The rear of the property contained a grasses/landscaped area, a patio and a detached two-car garage accessed via a concrete driveway from Wampum Road, along with an elevated structure bearing upon a natural, organic object (i.e. a tree) located on the property (Photos 6–9). The property was reportedly owned by Mr. John and Mrs. Noelle Lepper and had been originally constructed in 1923. Mr. and Mrs. Lepper reportedly purchased the property on or about 5/7/2012 and it has served as the primary residence for their family since that time. Multiple parties were present during the writer's inspection.

UNDERSTANDINGS

It is the writer's understanding that Mr. Lepper reportedly observed a syringe [a hypodermic needle] on his property in April 2018. It is the writer's additional understanding that Mr. and Mrs. Lepper subsequently resolved to construct a structure bearing upon a natural, organic object (i.e. a tree) in the rear yard of the subject property [the subject "treehouse"]. It is also the writer's understanding that on 5/3/2018 Mr. Lepper began construction of the subject structure without having submitted an application to the Village of Babylon for a building permit.

It is the writer's understanding that 5/10/2018 Mr. Stephen Fellman (the Village of Babylon Building Inspector) sent a letter to Mr. Lepper indicating that the construction of the subject treehouse "*may require a building permit*" and requested to be contacted to discuss the matter. It is the writer's additional understanding that on 5/21/2018 a Village of Babylon Notice of Violation of Babylon Village Code Section 365-26 was issued to Mr. Lepper and that construction of the subject structure ceased. It is also the writer's understanding that on 5/21/2018 Mr. Lepper visited the Village of Babylon Building Department and submitted a portion of an application for a building permit along with a hand-drawn sketch of the proposed construction and property survey. It is the writer's understanding that no building permit was issued for the proposed construction and on 6/15/2018 Mr. Lepper contacted the Village of Babylon Building Department via telephone whereby he was informed that no determination had been made regarding his application for a

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building permit. It is the writer's further understanding that on, or about, 7/7/2018 Mr. Lepper resumed construction of the subject treehouse without a building permit having been issued by the Village of Babylon Building Department.

It is the writer's understanding that on 7/19/2018 the Village of Babylon Building Department issued violations of Babylon Village Code Section 365-26 to Mr. Lepper regarding the construction of the subject treehouse without a building permit. It is the writer's additional understanding that on 8/14/2018 Mr. Fellman issued a letter to Mr. Lepper deeming the subject treehouse unsafe in accordance with the New York State Building Code (International Building Code). It is also the writer's understanding that on or about 2/20/2019 computer aided drawings bearing the signature and seal of James R. Brown, Ph.D., P.E., along with calculations, were produced and a subsequent 3/1/2019 "Treehouse" Letter by James R. Brown Ph.D., P.E. alleged that the "*the treehouse structure supported in the tree is structurally stable and meets code loading for wind, snow and LL [live load] as prescribed by IBC and local requirements.*"

It is the writer's understanding that it has been alleged that the actions by and/or on behalf of the Village of Babylon deprived the Leppers of their civil, constitutional and human rights. These allegations serve as the basis for the captioned matter.

REVIEW OF FILE MATERIAL

The 11/16/2018 Amended Verified Complaint included, alleged and/or stated, in relevant parts, the following: "1. **Plaintiffs**, John Lepper and Noelle Lepper, individually and as the parents and guardians of their infant son, B.J.L., and daughter, B.L., collectively referred to herein as the 'Lepper family,' **allege that Defendants**, jointly and severally, individually and collectively, intentionally, knowingly, wantonly, negligently, and/or recklessly, **sought to and did wrongfully deprive the Lepper family of their civil, constitutional, and human rights by committing acts under color of law which depriving the Lepper family of their civil, constitutional, and human rights**"; "2...was negligent in training, hiring and supervising its Building Inspector, Defendant Stephen Fellman and was deliberately indifferent to the need to train its Building Inspectors...**allege that Defendant Village of Babylon is liable to the Plaintiffs for abuse of process, malicious prosecution, and for conspiring to condone and encourage such civil rights violations and for conspiring to violate Plaintiffs' Civil Rights**"; "12. Plaintiffs have exhausted any potentially effective administrative remedies"; "17. John Lepper and Noelle Lepper his wife are the lawful owners of 59 Cockenoe Avenue, a corner lot of 7,575 square feet (0.1739 acres) with 50.50 feet frontage along Cockenoe Avenue, a 50 foot public roadway, and 150 feet frontage along Wampum Road, a 33 foot public roadway. in the Incorporated Village of Babylon, in the Town of Babylon, Suffolk County, New York and identified on the Suffolk County Tax Map as parcel 0102-004.00-01.00-100.00"; "28. **In April 2018, when he was playing with his children, Plaintiff, John Lepper, found a syringe, a hypodermic needle which he reasonably presumed to be utilized in illegal drug use, in his front yard.** He informed his neighbors immediately and was outspoken in trying to find a remedy to shield his children from potential disease and harm caused by used

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hypodermic needles”; “30. On or about May 3, 2018, after conferring with Plaintiff Noelle Lepper, Plaintiff John Lepper began to utilize timbers from an old boat house that was destroyed in Superstorm Sandy to create a treehouse to insulate his children from potential contact with the hypodermic needles he found in and around his property at 59 Cockenoe Avenue within the Village of Babylon.”; “32. By letter dated May 10, 2018, Village of Babylon Building Inspector Stephen Fellman informed Mr. Lepper that ‘It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit’”; “35. In response to the May 10, 2018 letter from Defendant Fellman, Plaintiffs stopped work on the treehouse for their children”; “38. On or about May 21st, 2018, Plaintiff John Lepper visited the Building Department office of Defendant Village of Babylon; completed a building permit application and submitted a front elevation/framing drawing with a copy of a recent survey of the Lepper Family Homestead”; “46. Plaintiff John Lepper, confident he was protecting his family and speaking out toward remedying the crime occurring on his property and the scourge of drugs in his community, spoke to and informed everyone present in the building department on May 21, 2018 that it was his intention to build the treehouse for his son’s birthday on July 7th, 2018 to allow his son the liberty and free use of the subject premises while maintaining a safe distance from the criminal activity in the neighborhood and the larger criminal narcotic problem known to the Village of Babylon”; “47. Defendants, jointly and severally, individually and collectively, apparently intended to take advantage of the voluntary, but not legally required, application filed by John Lepper for a permit to construct a tree house for his children as a vehicle to charge Plaintiffs with violations of Village of Babylon Code Section 365–26 and collect fines from Plaintiffs by simply refusing to consider and act upon the application by Plaintiff, John Lepper”; “49. Plaintiff John Lepper immediately ceased construction and assembly of the partially fabricated treehouse as soon as he was ordered to do so by Building Inspector Fellman”; “50. Determined to either delay construction of an innocuous and code-compliant treehouse solely for the benefit of minor children, or harass and intimidate the Lepper family by destroying their infant son’s eagerly anticipated birthday present, the Defendants, jointly and severally, individually and collectively, refused to issue the appropriate building permit.” “52. On July 19, 2018, Plaintiffs, received by certified mail three accusatory instruments dated July 11th, 12th & 13th each of which stated Mr. Lepper was in violation of Village of Babylon Code § 365–26 for construction of a treehouse without a permit”; “63. On or about August 14, 2018, Stephen Fellman, as Babylon Village Building Inspector wrote to Mr. Lepper declaring that ‘Per Section 116 Unsafe Structures of the International Building Code the tree house at the above referenced premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy is issued”; “64. There is no evidence that the Village of Babylon ever adopted the International Building Code nor incorporated its Section 116 as part of the Village of Babylon Code”; “65. No substantial credible evidence has ever been presented showing that the Lepper family treehouse is in any way unsafe for its intended use by the Lepper children and other children”; “83. Village of Babylon Code Village Judge Rafter finds that ‘Defendant [Mr. Lepper] did apply for a permit’ but then states without any reference to the record, ‘but his application was deemed incomplete as it did not contain a drawing from a licensed architect or engineer”; “124. Defendant Village of Babylon has not established any association between

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brace and horizontal members of the “support arm” were nominal 4 inch by 4 inch and 4 inch by 6 inch wood members, respectively; no connection was specified between the 4-inch by 6-inch horizontal timber and 4-inch by 6-inch vertical timber at each “support arm”; all window openings had typical dimensions of 20 inches by 30 inches; no means of ingress/egress was identified; no connection types or details were specified for roof framing members or intermediate nominal 2 inch by 6 inch floor supports; the document included no written notations and/or specifications indicating the building code or loading conditions by which the structure had been evaluated; the document included no information regarding evaluation of the structure’s foundation (i.e. the “spruce” tree, subsurface root system, surrounding subsurface material [soils], etc.) or wood construction design standards applicable to the structure’s construction. The provided letter additionally included seven (7) pages of handwritten notes/calculations/sketches entitled “*Treehouse-Calcs Structure*,” understood to have been produced by James R. Brown, Ph.D., P.E. relative to the 2/18/2019 “*Tree House As-Built*” Drawing Sheet. The following was noted regarding the provided calculations: page 1 of the document indicated that a “live” load of 40 pounds per square foot and a “snow” load of 25 pounds per square foot (“ground snow”) were to be design loads for the evaluation of the structure; however, the analysis included on that same page only evaluated the structure under conditions of “dead” load and no subsequent page within the document evaluated the structure under other loading conditions; page 1 of the document indicated that a “wind” speed of 115 miles per hour under Category “*Exposure B*” was to be included in design loads for the evaluation of the structure and calculated a “wind pressure” of 21 pounds per square foot; however, the analysis included on that same page only evaluated the structure under conditions of “dead” load and no subsequent page within the document evaluated the structure including wind loading; the document included no calculations evaluating connections between wood framing members or the subject structure foundation (i.e. the “spruce” tree, subsurface root system, surrounding subsurface material [soils], etc.); the calculations evaluated the bending capacity of the horizontal member of the “support arm” as a nominal 4 inch by 6 inch wood member; the calculations did not evaluate roof/ridge joists of the structure, their supporting members or connections upon which roof framing members were supported.

The 3/1/2019 “*Treehouse*” Letter by James R. Brown Ph.D., P.E. stated, in relevant part, the following:

“I find that the treehouse structure supported in the tree is structurally stable and meets code loading for wind, snow and LL [live load] as prescribed by IBC and local requirements. In other words the structure [a.k.a. the ‘treehouse structure’] is able to withstand all weather-related events that are in accordance with code-induced loading criteria” (descriptions/emphasis added).

The following was noted regarding the document: the date of Dr. Brown’s inspection of the subject structure was not identified on the subject documents, however, if conducted, would have reasonably occurred prior to 2/20/2019 [i.e. the date of the “*Preliminary Injunction-Copy of Architect’s Report*” Letter with attachments by Cory H. Morris Esq.] and at least 1 year, 5 months

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prior to the writer's 7/31/2020 site inspection; while Dr. Brown's Letter addressed the "treehouse structure," the letter did not indicate that he had concluded that the foundation of the structure (i.e. the tree, the tree's root system or the soils surrounding the tree roots) was either a stable foundation or structurally stable.

The 2/5/2020 Plaintiff's Supplemental Disclosures included the "New York City Fire Department, Bureau of Investigations and Trials - April 18, 2019 - Interview of Firefighter John Lepper, Transcript of the Proceedings" which stated in relevant part, "Q. Have you received any offers about a survey or an engineer report in relation to your treehouse done pro bono?-A. Yes.-Q. Did you accept?-A. Yes." The document additionally included an 8/14/2018 "Re: 59 Cockonoe Avenue Babylon, NY" Letter from Mr. Stephen Fellman (Village of Babylon Building Inspector) to Mr. John Lepper (59 Cockonoe Avenue, Babylon, NY 11702) which stated, "Dear Mr. Lepper, Per Section 116 Unsafe Structures of the International Building Code the treehouse at the above referenced premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy is issued." The document further included an 10/18/2018 "Re: Order of Removal" Letter from Mr. Stephen Fellman (Village of Babylon Building Inspector) to Mr. John Lepper which stated, "Dear Mr. Lepper: Per the decision and order of Village Justice John Rafter dated October 27, 2018 you have been found guilty of each of the offenses and are ordered to remove the treehouse immediately. Further, any and all work must cease on the treehouse and it may not be used from the date of this letter."

The writer noted that no documentation had been provided which indicated that Mr. Lepper and/or a representative of the subject property had filed an application for an inspection with the New York Board of Fire Underwriters or the Long Island Electrical Inspection Service, Inc. for the construction of the subject treehouse.

DEPOSITION TESTIMONY

John Lepper testified in deposition on 6/27/2019 to the following¹: "Q. And who are the titled owners of that premises?-A. Myself and my wife.-Q. When did you purchase the premises?-A. May of 2012." (p.12/13); "Q. Cockonoe Avenue, has that always been a one-family premises?-A. As far as I know." (p.14); "Q. Have you ever seen the certificate of occupancy for the home?-A. Yes, I have.-Q. Do you know if it says one family on the C of O?-A. I believe it does.-Q. Do you have the C of O?-A. Yes, I do.-Q. What is the size of the property?-A. Um, 150 -- 50 by 150." (p.15); "Q. And the property, does it abut any streets?-A. Yes.-Q. Okay.-A. It's a corner property.-Q. It's a corner property?-A. It's Cockonoe Avenue and Wampum, W-A-M-P-U-M.-Q. Wampum Avenue, Street?-A. Road." (p.16); "Q. When you did those renovations, did you hire an engineer?-A. Yes, I did. Architect." (p.17); "Q. You hired an architect but not an engineer?-A. Correct.-Q. Okay. And who was the architect you had hired at that time?-A. Actually, somebody who grew up

¹ The document provided to this writer for review was partially Redacted. However, the writer noted that no Redacted portion of the document appeared to include information or testimony that would alter the opinions offered in this report.

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on the block. Rich Cosi.-Q. And generally, what were the renovations you performed on the home a couple of months after you purchased it?-A. A full renovation.-Q. What does that mean?-A. That means we demoed the interior of the house, removed the front porch and the existing kitchen.” (p.18); “Q. Was there a contractor that you hired to perform the work? One contractor or more than one?-A. Yes, it was multiple subcontractors.-Q. Was there a main general contractor?-A. I was the acting general contractor.” (p.19/20); “Q. Do you have any experience as a general contractor?-A. Yes, I do.-Q. Do you have a business where you engage in general contracting?-A. Not currently, no.-Q. Okay. Did you ever?-A. My own personal business?-Q. Yes.-A. No.-Q. Did you ever perform work as a contractor outside of your personal homes or properties?-A. Yes.-A. I’ve been in the business my entire life. Grew up working with my father, worked for a contractor when I was in high school, electrical contractor when I was in high school. And in my mid twenties, I worked for a general contractor in Manhattan up until I was hired by the fire department.” (p.20/21); “Q. And where did you pull those permits from?-A. The village.-Q. The Village of Babylon?-A. Architect pulled the permits.-Q. And did you fill out the applications yourself at that time and signed off on them?-A. No.” (p.23); “Q. Were you familiar with the building codes at that time?-A. No, I wasn’t.” (p.24); “Q. During the time that you had worked as a contractor, had you ever dealt with building codes?-A. No.-Q. Did you ever advertise for work as a contractor?-A. No.” (p.26/27); “Q. And did you ever have any inspection of the trees on the property?-A. No. I had one tree removed during the construction.” (p.30); “Q. If we start with Exhibit A.” (p.32); “Q. In the foreground, do you see a small looking house and tree?-A. Yes.-Q. All right. Is that on the property that you own at 59 Cockenoe Avenue?-A. Yes.-Q. Do you know who built that home?-A. Yes.-Q. Who?-A. I did.” (p.33/34); “Q. Exhibit D.-Q. That’s part of your property along Mampum Road, correct?-A. Yes.-Q. The structure that’s attached to a tree, do you see that?-A. Yes.-Q. You make allegations regarding a treehouse. Is that the treehouse that you’re alleging in your complaint?-A. Yes.” (p.35); “Q. Did you seek to get any permits before doing the electrical work?-A. No, I didn’t.-Q. Do you know if any permits are required for something like that?-A. No, I don’t.-Q. Did you inquire?-A. No, I didn’t.” (p.49); “Q. Who decided which tree to put this treehouse on?-A. My wife. We both discussed it briefly, I guess.-Q. And what made you determine to put it on that tree?-A. That was the tree that was closest -- it was the tree closest to what was their play area in the backyard.” (p.58); “Q. The tree that you attached it to before you put the treehouse on there, did you do any inspection of that tree to make sure that it wasn’t dying or that it wasn’t weak or something else?-A. The trees were -- when we were doing the renovation on the property and the one tree was removed. The rest of the trees were pruned and maintained. And at that time, all the trees were very healthy.” (p.58/59); “Q. Where did you get the wood to make the treehouse?-A. Some of the wood -- most of the heavy timber and the siding was reclaimed from a boathouse that we -- a property we owned in Amityville was damaged during Sandy. And the boathouse had to be demoed, demolished. And that’s most of the material from that.” (p.60); “Q. When you say the wood was reclaimed, what does that mean?-A. After the boathouse was demolished, I asked the contractor to save me certain timbers so that I can use it.” (p.61); “Q. So it’s fair to say that the demolition of the boathouse took place less than six months before you started construction of the treehouse.-A. Yes. I believe so. It was close. It was right around the same time it was going on.” (p.64); “Q. So what wood did you use in terms of the construction of

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the treehouse that's not from the reclaimed lumber or timber? -A. The cedar shake shingles. -A. Cedar shake shingles, some of the siding and some of the 2 by 4 framing." (p.65); "Q. What do you have supporting that? -A. I have the frame structure that you see in the Exhibit. 4 by 12's. This is all in the engineer drawing. It's 4 by 6. -Q. Those pieces of wood that support the platform -- -A. Yes. -Q. -- are attached to the tree? -A. The framing is attached to the tree, correct." (p.68/69); "Q. Does that provide support to the platform? -A. Yes. -Q. Where did you get the wood to put that framing in? -A. That was from the demolished boathouse." (p.69); "Q. Now, the wood that's attached, who attached it to the tree? -A. I installed it. -Q. What is it attached to the tree with? -A. Half inch by 12 inch galvanized lag bolts. Four on each leg. -Q. The angled wood that's attached to the corners of each treehouse -- -Q. and then to the wood that you said you attached with galvanized lag bolts, how are they attached to the lateral pieces of wood on the tree itself? -A. They're attached timber frame style. They're mortised into each leg and fastened with lag bolt." (p.70/71); "A. The vertical that's attached with the lag bolts to the tree and then there is a horizontal coming out and then you have a horizontal coming out supporting the platform. And then a 45 4 by 6 mortise and tenon. And it's lagged together. And then the platform is screwed to the frame work with timber bolts. -A. Timber bolts. Six inch timber bolts. -Q. That's what attaches the platform to the -- -A. To the frame work." (p.72/73); "Q. Now, in terms of the design of the treehouse, did you work off of any designs when you started construction of the treehouse? -A. Not a design. A picture that I saw. -Q. Where did you see a picture? -A. I saw it on-line." (p.74/75); "A. The kids were getting a little older for their playground that was in the backyard. I'm not sure. -Q. You said they had a playground in the backyard. What type of playground did they have? -A. Just a plastic Step2. -Q. A plastic what? -A. A plastic Type 2. -Q. Like the No. 2? -A. Yes. With a bridge. -Q. How long did you have that in the backyard? -A. I don't know." (p.76/77); "Q. Did anyone assist you in building the treehouse? -A. No. A few people handed me a couple of pieces of wood but I wouldn't say anybody helped me. A few people helped me, passed up some wood. But I wouldn't say helped me." (p.81); "Q. In determining what the size was going to be of this treehouse, did you draft anything in order to construct the treehouse in the size that it appears now? -A. I did. I submitted it with my permit application. -Q. When you said 'it', you're talking about what? -A. Full front elevation drawing. -Q. When? -A. And the survey with the location. -Q. Okay. When did you prepare the drawing? -A. That was after I received a letter stating that I had already put the platform up. And I received the letter on May 10th stating that I was putting a structure that may require a permit." (p.81/82); "Q. And had used anything to work from; any plans, any drawings, pictures to work from in order to build the platform? -A. No. Just used the picture as an idea." (p.83); "Q. Did you work off of any instructions in order to build the treehouse structure? -A. No. I did have some experience when I was younger working for a framing contractor." (p.83/84); "Q. Were there any written documents that you looked at before building the platform? -A. As far as what? -Q. As far as any pictures, diagrams, any measurements, any specifications. Anything in writing that you looked at in order to build the platform and the framing. -A. No." (p.84/85); "Q. Is the treehouse completed at this point? -A. No." (p.86); "Q. Was there anything additional you wanted to do to the treehouse? -A. Finish? -Q. Yes. -A. Finish. -Q. What do you have to do to finish the treehouse? -A. Um, I have to finish putting the roof on, shutters, secure the windows to make it safe for the kids to play up there and install the hatch in the floor so that the kids can actually

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access it.” (p.87); “Q. And the hatch you were talking about, that’s on the floor? -A. Yes. -Q. Is that the entryway to the Treehouse? -A. It will be. It doesn’t exist right now. There is no hatch.” (p.88); “Q. How would the hatch give you access to the treehouse other than using a ladder? -A. There is a ladder up the tree. -A. You know, it would be ladder on the tree. There’s already wood that’s attached to the tree that the kids could climb up, open the hatch and they would just access the hatch through the floor. -Q. So the hatch actually is something that once they climb the ladder, go through the opening of the floor, they would close the hatch so that the opening would be closed; am I correct? -A. Correct.” (p.89/90); “Q. When you go up those steps -- -Q. -- is there an opening that you can go through at this point? -A. No. -Q. So the entire floor is -- -A. Sealed. -Q. -- sealed? Closed, right? -A. Yes.” (p.91); “Q. What type of ladder are you talking about that you would use in order to get access through the window of the treehouse? -A. A fiberglass 12-foot A-frame ladder.” (p.92); “Q. Now, you pull the walls up. How would you attach them and put them together, assemble them? -A. How did I attach them to one another? -Q. And to the platform. If you did. -A. When the walls were framed, the base plate and the header overlap one another. So you put it in position, you plumb the wall up; meaning, you level the wall. Once the wall is leveled, you screw the two together and then I used six-inch timber bolts to screw to the platform deck.” (p.96/97); “Q. What type of wood did you use for the roof? -A. 2 by 4 header and 2 by 4 rafters.” (p.98); “Q. Well, what I’m talking about is the part of the roof that -- -A. The rafters? -Q. Not the rafters. The covering, the plywood. -A. The sheathing? -Q. Yes, the sheathing. -A. It’s 1 by 6 pine. -Q. Was this something that you also got from the boathouse? -A. No. -Q. And where did you get that wood from? -A. Lowes. -Q. And you bought it new, I guess? -A. No. -Q. You bought it used? -A. I did.” (p.138); “Q. Have either of your children been up in the treehouse? -A. Up until today? -Q. Yes. -A. Yes.” (p.139); “Q. Did you have a birthday party for your son in July of 2018? -A. Yes. -Q. Did he have other children attend? -A. Yes. -Q. Did they go up on the treehouse? -A. No. I don’t believe so. -Q. Did any other children other than your own children go up into the treehouse? -A. When? Until now? -Q. Up until today. -A. Yes. Yes. -Q. ... time that there were any other children other than your own children who went up to the treehouse? -A. Well, I recently got a new neighbor and they have gone up to see the treehouse. So I let them see the treehouse.” (p.140/141); “Q. ... children up into the treehouse? -A. No. I let them see the treehouse. I told them they were not allowed to be in the treehouse so I let them look from the ladder.” (p.143); “Q. Did you put a ladder up for them to climb up to the treehouse? -A. I did. -Q. Did they go inside the treehouse? -A. They observed it from the ladder and I did let them walk in there real quick and then they came back out.” (p.144); “Q. Well, did you have any discussion as to whether those drawings are supposed to be done by a professional engineer -- -Q. -- or a registered architect? -A. No. Whoever received it in the building department made a comment that they don’t typically get detailed drawing of this level from a homeowner. And I explained to them that I went to drafting school in Amityville where Mr. Fellman owns his architectural firm and I mentioned if he needs a spec that’s not on there, I’ll be more than happy to give it to him. -Q. Do you hold any professional licenses? -A. No.” (p.263/264); “Q. So who told you that it was sufficient? -A. Whoever I spoke to in the building department when they asked for the survey. Or like I said, when I went there to fill out the permit application they told me everything that I brought down was acceptable. -Q. Did they make any representation to you that a permit could be issued based on what you submitted to

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them? -A. Yes. -Q. Who told you this? You said they. So it was more than one person? -A. Like I said, I don't know her name. I believe there was three girls. The only one I know is Holly which is my neighbor. I'm not sure what the other one's name was. When she took the permit application, she took it away. I think she went to another room, brought it back and she said it was acceptable." (p.269/270); "*Q. Has Miss Lepper ever been up in the treehouse? -A. Has she ever been up there? Yes. I believe so.*" (p.393). Defendant's Exhibits A-J were marked for identification during the testimony (p.5). Defendant's Exhibit M included the following: a 5/10/2018 "Re: 59 Cockonoe Avenue, Babylon" Letter [also marked Exhibit 1 dated 9/18/2018] by Stephen Fellman to Mr. John Lepper which stated in relevant part: "*It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit. Please contact me at the number above to discuss the matter*"; a 5/21/2018 Village of Babylon Notice of Violation [also marked Exhibit 3 dated 9/18/2018] to "*John Lepper*" which stated, in relevant part: "*Place of Occurrence-59 Cockonoe Ave – please take notice there exists a violation of Babylon Village Code Section 365-26 at the premises described above in that-building permit required*"; an undated Village of Babylon Building Department Building Permit Form [also marked Exhibit 5 dated 9/18/2018] which appeared to bear the signature of Mr. John Lepper for the property located at 59 Cockonoe Avenue with sections entitled "*Present use of property*," "*Proposed use*" and "*Description of proposed work*" left blank; the undated Village of Babylon Building Department Building Permit Form appeared to include a hand drawn sketch of a proposed structure; the hand drawn sketch specified a roof slope of "*10:12 to match house roof lines*," and an apparent "*tree*" diameter of 2 feet, 2 inches; the hand drawn sketch did not include a plan view of the proposed structure, specifications or details regarding wood framing members/connections as well as proposed exterior finishes, specifications or details regarding proposed means of ingress/egress, specifications or details regarding the number of supports serving as a foundation for the structure or bear the signature/seal of a registered design professional; the undated Village of Babylon Building Department Building Permit Form appeared to also include a property survey depicting a location of the proposed structure with plan dimensions of 8 feet wide by 8 feet long.

Gerard Glass testified in deposition on 7/5/2019 to the following: "*Q. In the course of your regular professional activities as the Village of Babylon Village of Babylon, do you prosecute accusatory instruments filed for violations of the Village of Babylon code? -A. Yes. -Q. Does anyone else? -A. Yes. -Q. Who? -A. The issuing officer. -Q. Who is that? -A. There are many of them. -Q. Can you list each one, please? -A. I can't. -Q. Why not? -A. There are too many of them and I don't know all their names.*" (p.114); "*Q. In the course your regular professional activities as the village attorney for the Village of Babylon, are you aware of whether the Village of Babylon has adopted the International Building Code? -A. I believe it has by operation of law because it adopted the State Code which in turn adopted the International Code.*" (p.119); "*Q. In that regard did you ever litigate any other cases under Village of Babylon Code 365-25. -A. Meaning prosecute? -Q. (Continuing) aside from John Lepper. -A. Meaning prosecute or try? -Q. In any regard, in any capacity. -A. I think yes. -Q. Can you tell me any other instances where you litigated cases under that section? -A. I cannot. -Q. In the course of your regular professional activities as an attorney or attorney for the Village of Babylon, do you know whether there have been any other*

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prosecutions under Village of Babylon Code 365-25?-A. I think yes.-Q. In the course of your regular professional activities as an attorney or attorney for the Village of Babylon, do you know whether there have been any other trials under Village of Babylon Code 365-25?-A. I think yes.” (p.135/136); “Q. In the course of your regular professional activities as the Village of Babylon village attorney, are you aware of the progress of that building permit application?-A. I’m aware now. But I wasn’t aware of the progress as it was ongoing in current time.-Q. What is the progress of that building permit application?-A. His application was incomplete. Be clear here that these are not determinations I made, these are determinations made by the building department building inspector.” (p.164/165); “Q. Are you aware of the current status of the Lepper family application for a building permit?-A. There is an incomplete application.” (p.171); “Q. In the course of your regular professional activities as the Village of Babylon village attorney, are you aware of how Village of Babylon Code 365-26 is enforced?-A. Same way as all codes are enforced.-Q. How is that?-A. I think generally the Village of Babylon tries to gain voluntary compliance and if they can’t, they write violations.” (p.178); “Q. In the course of your regular professional activities as attorney or as the Village of Babylon village attorney, are you aware of Village of Babylon codes that use square footage in determining what is an what is not illegal?- A. There are standards in the village code for certain types of structures that allow one to not follow more rigorous building permit procedures.-Q. When you say not follow, to what are you referring? What do you mean?-A. There’s different procedures for certain structures that are smaller.-Q. When you say not follow, that means they wouldn’t need a permit, correct?-A. It means whatever the code says.-Q. In that instance which you mentioned, would they or would they not need a permit?-A. They might, you know, it all depends. There’s other qualifying factors. Like you may have a requirement that a shed under a certain number of square feet doesn’t require a permit. But there’s other qualifying factors including like your tree house, its proximity to a setback.” (p.182/183); “Q. As Village of Babylon village attorney, did you become aware of complaints from residents regarding needles?-A. I’m aware of one complaint.-Q. As Village of Babylon village attorney did you become aware of complaints from residents?-A. I’m aware of one complaint.” (p.185); “Q. Is Stephen Fellman in his capacity as building inspector responsible for the administration of the Village of Babylon code?- A. Yes. Portions of code, not the entire code.-Q. What portions of the code?-A. Those that relate to building structure that are under the charge of building inspector.” (p.316); “A. You know, there is a lot of things that people just don’t know that are in that code book, that’s sort of the way things work, though. There is not an obligation on the part of the village to sit and spoon feed every resident every section of the code. People are duty bound just by law to be familiar with the laws that regulate them. That goes not only for the Village of Babylon but for the Town of Babylon, the County of Suffolk, the State of New York. Just because you don’t know about something, Cory, as you know as an attorney, doesn’t mean you’re not bound to comply with the law.” (p.322)

Stephen Fellman testified in deposition on 9/4/2019 to the following: “Q. Mr. Fellman, are you an architect licensed to practice in the State of New York?-A. Yes.-Q. When were you licensed to practice architecture in the State of New York?-A. 1983.” (p.6); “Q. To be clear, you’re not licensed in any other state to practice architecture?- A. No. I hold an NACRB license which is the

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license, which if I want to apply to different states to be licensed, I can pay a fee and become licensed.-Q. What does NACRB stands for?-A. National Architectural something something Board.” (p.7); “Q. Does your license or registration in New York as an architect include the right to act as a structural engineer?-A. Yes.” (p.9); “Q. By whom are you employed at the present time?-A. Village of Babylon.-Q. Anybody else?-A. Village of Farmingdale.-Q. Anybody else?-A. Village of Roslyn Harbor.-Q. Anybody else?-A. That’s it.-Q. Prior to your employment with those three villages, did you maintain any other employment?-A. I have an architectural firm.-Q. Do you still have an architectural firm?-A. Yes.-Q. Are you employed by that architectural firm currently?-A. I do not draw a paycheck, but I own it; so however you want to classify that.” (p.21/22); “Q. Any other jobs that you didn’t mention other than those four jobs?-A. I’m on the architectural review board for Lake Success and Roslyn Estates.-Q. Anything else?-A. That’s it.” (p.23); “Q. What position do you maintain at the Village of Babylon?-A. Building inspector.-Q. How long have you maintained that position?-A. The entire time.-Q. Is that a full-time or a part-time position?-A. Part-time.-Q. What are the hours worked?-A. Hours, I work there Tuesday, Wednesday, and Friday 1:00 to 5:00.” (p.26); “Q. When you say issue building permits, can you please explain to what that job duty consists?-A. Consists of when an application comes in for a building permit, we review the plans and make sure they’re adequate and correct and all the paperwork is in order, then we issue a building permit for construction.-Q. Who is ‘we’?-A. The Department, I would sign off on it, it would be processed by the secretary.” (p.29); “Q. What are your job duties as the Village of Babylon building inspector?-A. Pretty similar to Farmingdale, but it’s only me, so I do all the inspections in Babylon.-Q. Explain what you mean by that.-A. I’m the only building inspector. In Farmingdale, they have a full-time building inspector, so he does most of the fieldwork and the inspections there. There’s only me in the Village of Babylon, so I have to do all the inspections.” (p.30); “Q. When you say drive through, can you explain what you mean?-A. Again, just drive through the village. They don’t want any construction going on on the weekends, so a code enforcement guy goes through on Saturday, I go through on Sunday to make sure there is not construction taking place.-Q. What is your job title at Roslyn Harbor?-A. Building inspector.” (p.32); “Q. How long has the architectural firm you operate been in business?-A. What are you talking about?-Q. The architectural firm you operate now.-A. Twelve years.” (p.55); “Q. When you sign the plans as an architect, what responsibility do you assume for the structure depicted in the plan?-A. You’re assuming that it’s designed correctly and it’s gonna stand up.-Q. Explain what you mean, stand up?-A. Not going to fail, it’s going to be structurally sound.-Q. When you say structurally sound, are you referring to safety or something else?-A. Safety and the building is not gonna collapse and fall down or blow down in a hurricane.” (p.98/99); “Q. What are your duties as the Village of Babylon building inspector?-A. What are my duties?-Q. Yes.-A. To review plans for construction, to issue building permits, to inspect construction, to issue Certificates of Occupancy or completion at the end of construction, issue violations if there are violations to the zoning code.” (p.117); “Q. Mr. Fellman, did there come a time in the course of your professional activities as the building inspector for the Village of Babylon where you became aware of an arboreal structure at 59 Cockenoe Avenue, Village of Babylon, County of Suffolk, State of New York?-A. I don’t what that word means, arboreal?-Q. A structure in a tree, a tree structure.-A. Okay. Yes.-Q. What were the circumstances under which this arboreal structure came

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to your attention? -A. One of our trustees brought it to my attention. -Q. When you say one of your trustees, to whom are you referring? -A. Tony, Tony Davida. -Q. How did you bring it to your attention? -A. I was at Village Hall and he said, oh, Steve, looks like somebody's building something in a tree over on Cockenoe, you better go check it out." (p.137/138); "Q. What, if anything, did you do in response to that conversation? -A. I did what I normally do. When a trustee or the mayor suggests something, that means, do it right now, so I went over there to take a look." (p.138/139); "Q. When you say you went over there to take a look, what did you do, where did you go? -A. I went over to Cockenoe and I saw what looked to be a big flat platform built in with a tree, about eight feet off the ground." (p.139); "Q. Did you ever make a determination that the arboreal structure at 59 Cockenoe Avenue, Village of Babylon, State of New York was unsafe? -A. No, I made no determination. -Q. So you have no opinion of the safety of the structure at 59 Cockenoe Avenue Village of Babylon? -A. I do now. -Q. When you say you do now, when did you make the determination that the structure at 59 Cockenoe Avenue Village of Babylon was unsafe? -A. I didn't make a determination that it was unsafe. -Q. Who did? -A. I don't know that anybody did. We wanted to make sure it was safe and that Mr. Lepper supplied information from a structural engineer showing that it should be safe. -Q. Is it your opinion that the structure is safe? -A. It would be my opinion that I would trust the certification of an engineer, if he says it's safe, that's good by me. -Q. An engineer took a look at the structure at Mr. Lepper's house, correct? -A. That's my understanding. -Q. And the engineer made a report correct? -A. Yes." (p.146/147); "Q. As you sit here today, the arboreal structure that Mr. Lepper has, the tree house, is it safe? -A. It's my belief that it's safe. -Q. You never made a determination that the arboreal structure at 59 Cockenoe was unsafe; is that your testimony? -A. Yes. -Q. Did there come a time you wrote a summons or accusatory instruments regarding that structure at 59 Cockenoe, Village of Babylon? -A. Yes. -Q. What were the basis for those violations? -A. The basis were doing construction without a building permit. -Q. How many violations did you issue? -A. I don't know. I think at least three or four." (p.148/149); "Q. What's the purpose of obtaining a building permit for the arboreal structure at 59 Cockenoe Avenue, Village of Babylon, State of New York. -A. What was the purpose? Well, multiple purposes. First, what are you building? Is it going to be safe? And most, biggest concern I had is, it appeared to be within the front yard setback which would require a variance from the Zoning Board of appeals to locate it where it's located. -Q. Safety was a concern of yours; is that right? -A. Absolutely." (p.150/151); "Q. Are you aware of whether there are any other tree houses in the Incorporated Village of Babylon? -A. I know of one other. -Q. The answer is yes, one other? -A. Yes, one other." (p.158); "Q. Did you look at Mr. Lepper's tree house? -A. I didn't -- just from the street." (p.160/161); "Q. If a person within the Village of Babylon was building a large dog house and you observed it, would you tell that person to go out and get a building permit? -A. Yes." (p.203); "Q. In the course of your regular professional activities as a Village of Babylon building inspector, have you issued Certificate of Occupancy for a tree house? -A. One." (p.207); "Q. In the course of your regular professional activities as Village of Babylon building inspector, have you ever issued a Certificate of Occupancy for a tool shed? -A. Yes. -Q. In the course of your regular professional activities as Village of Babylon building inspector, have you ever issued a Certificate of Occupancy for a garage? -A. Yes." (p.209); "Q. In the course of your regular professional activities as the Village of Babylon building inspector, do you refer to the Babylon Village code

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when you write an accusatory instrument? -A. Depends if it's Village code violation, I would cite the Village code. If it's a State code violation, I would cite the State code violation." (p.220); "Q. What are the criteria that you use to determine whether there has been a violation of the Babylon Village code? -A. Depends on what it is. I mean, you know, it's different types of violations I think. We have setback problems, you have height problems, we have FEMA elevation problems with flooding. Then we have construction without a building permit. We have occupancy without a Certificate of Occupancy." (p.221); "Q. In the course of your regular professional activities as the Village of Babylon building inspector, do you investigate circumstance under which there is a violation of the Village of Babylon code based upon a complaint from anyone other than your own department or you? -A. Yes. -Q. Who? -A. We are obligated to respond to any complaint even if it's anonymous." (p.227); "Q. In the course of your regular professional activities as Village of Babylon building inspector, do you investigate alleged violations of the Village of Babylon code at the insistence of any member of the Village of Babylon government? -A. I don't understand 'insistence.' If I receive a complaint from anybody, I'm going to check it out." (p.228); "Q. What caused you initiate the investigation of a complaint of the tree house for the Lepper children? -A. Again, it wasn't a complaint, it was an observation by Tony Davida, the trustee. -Q. You're saying observation by Tony Davida. Can tell me what you consider an observation by Tony Davida, the trustee? -A. When he came to Village Hall, I guess he went down that block and he said he observed them building something in a tree, I'm not sure what it is. I said, all right, let's go have a look." (p.229); "Q. Do you know what the purpose of Mr. Lepper's tree house was? -A. Well, I had two conversations with him where he explained to me that he found a hypodermic needle in his bushes and felt for the safety of his kids, he wanted to build a tree house. -Q. As you sit here today, do you know if the tree house was for the use of John Lepper's kids? -A. That's what he told me it was for." (p.232)

INSPECTION FINDINGS

The writer directed his attention to the subject property and treehouse and noted the following (Photos 10–11): the subject structure was elevated above the adjacent grade and employed an approximately 2 foot, 2 inch diameter natural, organic object (i.e. a tree) located in the rear yard of the subject property² as a foundation; the north exposure of the structure contained what appeared to be an operable two-piece hinged door; the centerline of the tree containing the structure (the subject tree) was located 13 feet, 1 inch from the interior edge of the concrete curb along Wampum Road and 4 feet, 6 inches from wood fencing adjacent to Wampum Road; the centerline of the subject tree was located approximately 9 feet, 10-1/2 inches east and 25 feet north of the single familiar residence on the property; the centerline of the subject tree was located approximately 22 feet, 9-1/2 inches south of the detached two-car garage on the property; the subject structure was supported at its corners by four (4) wood braces which consisted of nominal 10 inch by 3 inch horizontal members supported by diagonal nominal 4 inch by 6 inch members and a vertical nominal 4 inch by 6 inch members along with intermediate nominal wood members

² Relative to Cockenoe Avenue.

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below flooring of the structure (Photos 12–13); the four wood braces all displayed staining consistent with exposure to exterior elements over an extended period of time and did not display evidence of painting or a surface coating (i.e. sealant, pressure treated lumber, etc.) (Photo 14); the connections between the horizontal wood members and vertical wood members of the braces had been constructed with non-traditional framing methods³ and did not contain fasteners (Photos 15–16); the connections between the brace angled wood members and horizontal/vertical wood members contained mortised connections with the top connections being a bearing type connection with no fasteners and the bottom connections containing 1-1/4 inch deep countersunk holes with what appeared to be single lag bolts intended to fasten both the angled wood members and vertical wood members to the tree (Photo 17); the vertical wood members appeared to each be fastened to the subject tree by three (3) additional lag bolts⁴ installed in 1-1/4 inch deep countersunk holes; the northwest and northeast brace horizontal members displayed evidence of checking along its length (Photos 18–20); the northeast brace vertical member was non-continuous with a lower section containing two additional lag bolts installed in 1-1/4 inch deep countersunk holes and was not in contact with, nor supporting, an upper section or the structure above (Photos 21–24); the southwest brace displayed evidence of displacement due to dead load (i.e. gravity/self-weight) consistent with an ongoing/progressive structural failure at the non-traditional connection between the horizontal and vertical wood members (Photos 25–29); a wood shim had been installed between the southwest brace vertical member and the subject tree and a lag bolt at that member was noted to not have been fully engaged during installation (Photos 30–33); the southeast brace displayed evidence of physical damage to surfaces of the vertical wood member either prior to, during or post construction (Photos 34–36); a platform of nominal 2 inch by 10 inch wood members was constructed atop the four (4) wood braces and intermediate nominal wood members; the finished floor of the platform surface measured 8 feet, 8-13/16 inches above adjacent grade and had plan dimensions of 9 feet, 10-1/4 inches by 11 feet, 4 inches covering a total lot area of 111.7 square feet; metal conduit was noted to be fastened to the subject tree and structure and appeared to provide electrical power to the tree house (Photos 37–40); the subject structure contained four framed walls with a gable roof atop the platform and did not appear to contain a means of ingress/egress as access to the interior could only be achieved through openings (i.e. “windows”) in the structure’s exterior walls via the use of an appropriately placed extension ladder; the interior of the subject structure contained exposed wood framing which displayed evidence of staining consistent with the exposure to elements over an extended period of time and exposed electrical wiring (Photos 41–48); the walls of the structure were framed with nominal 2 inch by 4 inch wood members spaced approximately 16 inches on center; the interior floor area of the structure had plan dimensions of 9 feet, 7-1/2 inches by 8 feet, 1 inch covering a total lot area of 77.8 square feet; the structure’s roof and ridge joists were supported by non-traditional framing methods and bore upon what appeared to be vertically oriented wood fence posts [which displayed

³ Understood to have been the “timber framed style” and/or “mortised” connections referred to by Mr. Lepper during his 6/27/2019 deposition testimony

⁴ Understood to have been the 1/2-inch diameter by 12-inch long lag bolts referred to by Mr. Lepper during his 6/27/2019 deposition testimony. The writer noted that destructive testing/removal of the observed lag bolts would be required to confirm Mr. Lepper’s testimony.

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evidence of physical damage to surfaces either prior to, during or post construction] and a nominal 2 inch by 4 inch wood member fastened to the subject tree by screws⁵ (Photos 49-55); nominal wood 2 inch by 4 inch wall framing studs bore markings/stamping indicating the material (i.e. wood/lumber) had not been pressure-treated and no other evidence was observed that the members were otherwise protected from the exterior elements to which they were exposed (i.e. painting, sealant, etc.); chairs, a hammock and children's toys were observed within the structure at the time of the inspection.

OPINIONS

Based upon the writer's 7/31/2020 site inspection, review of file material and technical research, along with the writer's education, licensure, experience and the foregoing, the writer offers the following opinions to a reasonable degree of engineering certainty:

1. The subject structure (i.e. the "treehouse") was a "building" as defined by Section 365-3 of the Code of the Village of Babylon, entitled "*Definitions and word usage*." In this regard, that code section stated the following in relevant parts:

"A. Unless otherwise stated expressly, as used in this chapter, the following terms shall have the meanings indicated:"

"BUILDING-A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels."

"STRUCTURE-A combination of materials other than a building to form a construction that is safe and stable, and includes among other things stadiums, swimming pools, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, sheds, coal bins, walls, gas pumps, fences over six feet in height and display signs. The term 'structure' shall be construed as though followed by the words 'or part thereof.'"

"B. The words 'used for' include 'designed for' and vice versa; words used in the present tense include the future; words in the singular include the plural number and vice versa; the word 'dwelling' includes the word 'residence'; the word 'building' includes the word 'structure'; the word 'lot' includes the word 'plot'; and the word 'shall' is always mandatory and not discretionary or directory."

⁵ The diameter and dimensions of the subject screws were not identifiable during the inspection nor provided in Mr. Lepper's 6/27/2019 deposition testimony.

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Additionally, during the 7/31/2020 site inspection the subject structure was observed to contain a “roof supported by walls” and contained chairs, a hammock and children’s toys such that structure appeared to be intended for use for “shelter...or enclosure of persons.” Similarly, the 11/16/2018 Amended Verified Complaint stated, in relevant part, the following: “30. On or about May 3, 2018, after conferring with Plaintiff Noelle Lepper, Plaintiff John Lepper began to utilize timbers from an old boat house that was destroyed in Superstorm Sandy to create a treehouse to insulate his children from potential contact with the hypodermic needles he found in and around his property at 59 Cockenoe Avenue within the Village of Babylon.”; “46. Plaintiff John Lepper, confident he was protecting his family and speaking out toward remedying the crime occurring on his property and the scourge of drugs in his community, spoke to and informed everyone present in the building department on May 21, 2018 that it was his intention to build the treehouse for his son’s birthday on July 7th, 2018 to allow his son the liberty and free use of the subject premises while maintaining a safe distance from the criminal activity in the neighborhood and the larger criminal narcotic problem known to the Village of Babylon.” Likewise, Mr. John Lepper testified in deposition on 6/27/2019 to the following: “Q. Is the treehouse completed at this point?-A. No.” (p.86); “Q. Was there anything additional you wanted to do to the treehouse?-A. Finish?-Q. Yes.-A. Finish.-Q. What do you have to do to finish the treehouse?-A. Um, I have to finish putting the roof on, shutters, secure the windows to make it safe for the kids to play up there and install the hatch in the floor so that the kids can actually access it.” (p.87); “Q. Now, you pull the walls up. How would you attach them and put them together, assemble them?-A. How did I attach them to one another?-Q. And to the platform. If you did.-A. When the walls were framed, the base plate and the header overlap one another. So you put it in position, you plumb the wall up; meaning, you level the wall. Once the wall is leveled, you screw the two together and then I used six-inch timber bolts to screw to the platform deck.” (p.96/97); “Q. What type of wood did you use for the roof?-A. 2 by 4 header and 2 by 4 rafters.” (p.98); “Q. Have either of your children been up in the treehouse?-A. Up until today?-Q. Yes.-A. Yes.” (p.139). Therefore, the writer determined that the subject structure was a “structure having a roof supported by columns or walls” intended to be used/employed by Mr. Lepper and his family “for the shelter, support or enclosure of persons, animals or chattels.” Therefore, the writer concluded that the subject structure (i.e. the “treehouse”) was a “building” as defined by Section 365-3 of the Code of the Village of Babylon, entitled “Definitions and word usage.”

2. The construction of the subject structure (i.e. the “treehouse”) required a construction permit issued by the Building Inspector of the Village of Babylon in accordance with Section 365-26(A) of the Code of the Village of Babylon, entitled “Permit required; material to be submitted.” In this regard, the code section stated, in relevant part, the following:

“A. No building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no

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excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector. The Building Inspector shall require that the application for a permit and the accompanying plot plan, plans and specifications shall contain all information necessary to enable him to determine whether the proposed building addition or structural alterations or change of use to an existing building comply with the provisions of this chapter and Chapter 171, Flood Damage Prevention, where applicable. [Amended 10-24-2006 by L.L. No. 8-2006; 7-14-2015 by L.L. No. 5-2015]" (emphasis added).

Additionally, as previously addressed, the subject structure (i.e. the "treehouse") was a "building" as defined by Section 365-3 of the Code of the Village of Babylon, entitled "Definitions and word usage." Also, 11/16/2018 Amended Verified Complaint stated, in relevant part, the following: "30. On or about May 3, 2018, after conferring with Plaintiff Noelle Lepper, Plaintiff John Lepper began to utilize timbers from an old boat house that was destroyed in Superstorm Sandy to create a treehouse to insulate his children from potential contact with the hypodermic needles he found in and around his property at 59 Cockenoe Avenue within the Village of Babylon"; "38. On or about May 21st, 2018, Plaintiff John Lepper visited the Building Department office of Defendant Village of Babylon; completed a building permit application and submitted a front elevation/framing drawing with a copy of a recent survey of the Lepper Family Homestead" (emphasis added). Therefore, the writer determined that on 5/3/2018 Mr. Lepper began to erect a new building at the subject property within the Village of Babylon. Therefore, the writer concluded that the construction of the subject structure (i.e. the "treehouse") required a construction permit issued by the Building Inspector of the Village of Babylon in accordance with Section 365-26 of the Code of the Village of Babylon, entitled "Permit required; material to be submitted."

3. Section 365-26(C)(3) of the Code of the Village of Babylon was neither applicable nor enforceable to the subject structure (i.e. the "treehouse"). In this regard, Section 365-3 of the Code of the Village of Babylon, entitled "Definitions and word usage," provided the following definition of "Lot Area":

"LOT AREA-The total horizontal area within the boundary lines of a lot, excluding any portion of an abutting street, whether publicly or privately owned."

Additionally, Section 365-26(C)(3) of the Code of the Village of Babylon stated:

"C. Decks/patios; outdoor playgrounds and gyms. [Added 9-9-1986 by L.L. No. 4-1986; amended 1-11-1994 by L.L. No. 1-1994]"

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(3) A building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet."

As previously addressed, subject structure (i.e. the "treehouse") was a "building" as defined by Section 365-3 of the Code of the Village of Babylon, entitled "*Definitions and word usage*," and no evidence has been reviewed to conclude that the structure was an "*outdoor playground or gym (on any combination)*." Regardless, during the 7/31/2020 site inspection, the writer measured the finished floor surface of the platform of the subject structure to have plan dimensions of 9 feet, 10-1/4 inches by 11 feet, 4 inches, covering a total horizontal area with the boundary lines of the subject lot of 111.7 square feet. The writer also noted that, Section 365-26(C)(3) of the Code of the Village of Babylon directed that "*a building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet*" and did not specify when (or if) a building permit would be required for a structure of such type with a lot area of less than, or equal to, 90 square feet. Therefore, the writer determined that: the subject structure was not an "*outdoor playground or gym (on any combination)*"; while the structure would not be identified as an "*outdoor playground or gym (on any combination)*", the "*lot area*" of the subject structure exceeded 90 square feet and a building permit would be required; and, Section 365-26(C)(3) of the Code of the Village of Babylon would allow for the requirement of a building permit for an "*outdoor playground or gym (on any combination)*" structure with a lot area of less than, or equal to, 90 square feet. Therefore, the writer concluded that Section 365-26(C)(3) of the Code of the Village of Babylon was neither applicable nor enforceable to the subject structure (i.e. the "treehouse").

4. A request by the Village of Babylon Building Official for construction documents prepared by a New York State registered architect or licensed professional engineer along with such other information and documentation as may be necessary to determine whether the proposed work conformed with the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") and Energy Code was in accordance with the requirements of the Code of the Village of Babylon, the Uniform Code and 19 NYCRR Part 1203 entitled "*Uniform Code: Minimum Standards for Administration and Enforcement*." In this regard, the undated Village of Babylon Building Department Building Permit Form [marked during the 6/27/2019 deposition testimony of Mr. John Lepper and also marked Exhibit 5 dated 9/18/2018] appeared to include a hand drawn sketch of a proposed structure. The hand drawn sketch did not include a plan view of the proposed structure, specifications or details regarding wood framing members/connections as well as proposed exterior finishes, specifications or details regarding proposed means of ingress/egress, specifications or details regarding the number of supports serving as a foundation for the structure or bear the signature/seal of a registered design professional. Additionally, during the 7/31/2020 site inspection the following was observed: the four wood braces all displayed staining consistent with exposure to exterior elements over an extended period of time and did not display evidence of painting or a surface coating (i.e. sealant, pressure treated lumber, etc.);

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the connections between the horizontal wood members and vertical wood members of the braces had been constructed with non-traditional framing methods and did not contain fasteners; the southwest brace displayed evidence of displacement due to dead load (i.e. gravity/self-weight) consistent with an ongoing/progressive structural failure at the non-traditional connection between the horizontal and vertical wood members; the subject structure contained four framed walls with a gable roof atop the platform and did not appear to contain a means of ingress/egress as access to the interior could only be achieved through openings (i.e. “windows”) in the structure’s exterior walls via the use of an appropriately placed extension ladder; the interior of the subject structure contained exposed wood framing which displayed evidence of staining consistent with the exposure to elements over an extended period of time and exposed electrical wiring; the structure’s roof and ridge joists were supported by non-traditional framing methods and bore upon what appeared to be vertically oriented wood fence posts [which displayed evidence of physical damage to surfaces either prior to, during or post construction] and a nominal 2 inch by 4 inch wood member fastened to the subject tree by screws; and, chairs, a hammock and children’s toys were observed within the structure at the time of the inspection. Section 365-26(A) of the Code of the Village of Babylon, entitled “*Permit required; material to be submitted*” stated, in relevant part, the following:

“A. No building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector. The Building Inspector shall require that the application for a permit and the accompanying plot plan, plans and specifications shall contain all information necessary to enable him to determine whether the proposed building addition or structural alterations or change of use to an existing building comply with the provisions of this chapter and Chapter 171, Flood Damage Prevention, where applicable. [Amended 10-24-2006 by L.L. No. 8-2006; 7-14-2015 by L.L. No. 5-2015]” (emphasis added).

Section 365-30 of the Code of the Village of Babylon, entitled “*Requirements for issuance of certificate of occupancy*” stated, in relevant part, the following:

*“No certificate of occupancy shall be issued by the Building Inspector until he has satisfactory evidence of the following:
A. Construction, alteration or remodeling of the building and the installation of equipment therein has been completed in accordance with the provisions of the New York State Uniform Fire Prevention and Building Code and any other applicable code or codes adopted by this Village”* (emphasis added).

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Similarly, Section 108.4 of the New York State Building Standards and Codes 2017 Uniform Code Supplement entitled “*Applications for Building Permits*” stated, in relevant part, the following:

“A person or entity applying for a Building Permit shall submit an application to the Authority Having Jurisdiction. An application for a Building Permit shall include:

- 1. the information and documentation required by the stricter of the Authority Having Jurisdiction's Code Enforcement Program or a Part 1203-Compliant Code Enforcement Program;*
- 2. construction documents (drawings and/or specifications) that define the scope of the proposed work and satisfy the requirements of the stricter of the Authority Having Jurisdiction's Code Enforcement Program or a Part 1203-Compliant Code Enforcement Program; and*
- 3. such other information and documentation as the Authority Having Jurisdiction may determine to be necessary to allow the Authority Having Jurisdiction to determine whether the proposed work conforms with the Uniform Code and Energy Code” (emphasis added).*

Moreover, 19 NYCRR Part 1203 entitled “*Uniform Code: Minimum Standards for Administration and Enforcement*” contained section 1203.3 entitled “*Minimum features of a program for administration and enforcement of the Uniform Code*” which stated, in relevant part, the following:

“A program for administration and enforcement of the Uniform Code shall, include all features described in subdivisions (a) through (j) of this section. A government or agency charged with or accountable for administration and enforcement of the code must provide for each of the listed features through legislation or other appropriate means.

(a) Building permits.

(1) Building permits shall be required for work which must conform to the Uniform Code. A government or agency charged with or accountable for administration and enforcement of the Uniform Code may exempt from the requirement for a permit the categories of work listed in subparagraphs (i) through (xii) of this paragraph. An exemption from the requirement to obtain a permit shall not be deemed an authorization for work to be performed in violation of the Uniform Code. The following categories of work may be excluded from the requirement for a building permit: (i) construction or installation of one story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or

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similar uses, provided the gross floor area does not exceed 144 square feet (13.88m²); (ii) installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses); (iii) installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground; (iv) installation of fences which are not part of an enclosure surrounding a swimming pool; (v) construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids; (vi) construction of temporary motion picture, television and theater stage sets and scenery; (vii) installation of window awnings supported by an exterior wall of a one- or two- family dwelling or multiple single-family dwellings (townhouses); (viii) installation of partitions or movable cases less than 5'-9" in height; (ix) painting, wallpapering, tiling, carpeting, or other similar finish work; (x) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances; (xi) replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; and (xii) repairs, provided that such repairs do not involve: (a) the removal or cutting away of a loadbearing wall, partition, or portion thereof, or of any structural beam or load bearing component; (b) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; (c) the enlargement, alteration, replacement or relocation of any building system; (d) the removal from service of all or part of a fire protection system for any period of time.

(2) An application for a building permit shall request sufficient information to permit a determination that the intended work accords with the requirements of the Uniform Code and shall require submission of the following information and documentation: (i) a description of the proposed work; (ii) the tax map number and the street address; (iii) the occupancy classification of any affected building or structure; (iv) where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and (v) at least two sets of construction documents (drawings and/or specifications) that define the scope of the proposed work.

(3) Construction documents shall not be accepted as part of an application for a building permit unless such documents: (i) are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law; (ii) indicate with sufficient clarity and detail the nature and extent of the work proposed; (iii) substantiate that the proposed work will comply with the Uniform Code and the State

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Energy Conservation Construction Code; (iv) where applicable, include a site plan that shows any existing and proposed structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the structures and the lot lines” (emphasis added).

Therefore, the writer determined that the undated Village of Babylon Building Department Building Permit Form and the included hand drawn sketch of a proposed structure did not contain all information necessary to determine whether the proposed structure complied with the provisions of Chapter 365 of the Code of the Village of Babylon. Therefore, the writer concluded that a request by the Village of Babylon Building Official for construction documents prepared by a New York State registered architect or licensed professional engineer along with such other information and documentation as may be necessary to determine whether the proposed work conformed with the Uniform Code and Energy Code was in accordance with the requirements of the Code of the Village of Babylon, the Uniform Code and 19 NYCRR Part 1203.

5. The installation of electrical wiring within the subject structure (i.e. the “treehouse”) violated Chapter 133 of the Code of the Village of Babylon entitled, “*Electrical Inspection*”. In this regard, Section 133-5 of the Code of the Village of Babylon entitled, “*Prohibited Acts*” stated:

“It shall be a violation of this chapter for any person, firm or corporation to install or cause to be installed or to alter any electrical wiring installation, device or equipment for light, heat or power in or upon any building or construction in the Village prior to the filing of an application for inspection with the New York Board of Fire Underwriters or the Long Island Electrical Inspection Service, Inc. It shall be a violation of this chapter for any person, firm or corporation to connect or cause to be connected any electrical wiring, installation device or equipment for light, heat or power for any building or construction to any source of electrical energy supply prior to the issuance of a temporary certificate or a certificate of compliance by the New York Board of Fire Underwriters or the Long Island Electrical Inspection Service, Inc.” (emphasis added).

Additionally, the following was observed during the 7/31/2020 site inspection: the interior of the subject structure contained exposed electrical wiring. Also, Mr. John Lepper testified in deposition on 6/27/2019 to the following: “Q. Did you seek to get any permits before doing the electrical work? -A. No, I didn’t. -Q. Do you know if any permits are required for something like that? -A. No, I don’t. -Q. Did you inquire? -A. No, I didn’t.” Furthermore, the writer noted that no documentation had been provided which indicated that Mr. Lepper and/or a representative of the subject property had filed an application for inspection with

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the New York Board of Fire Underwriters or the Long Island Electrical Inspection Service, Inc. for the construction of the subject treehouse. As such, the writer concluded that the installation of electrical wiring within the subject structure (i.e. the “treehouse”) violated Chapter 133 of the Code of the Village of Babylon entitled, “*Electrical Inspection*.”

6. The condition of the subject structure observed during the 7/31/2020 site inspection appeared to be consistent with an unsafe condition/structure as well as dangerous to the life, health, property or safety of the public or to the occupants of the structure and may present a clear and imminent threat to human life, safety or health as defined by Section 116.1 of the 2015 International Building Code, entitled “*Conditions*,” and Section 101.2.6.7 of the New York State Building Standards and Codes 2017 Uniform Code Supplement, entitled “*Unsafe structures and equipment*.” In this regard, The State of New York Fire Prevention and Building Code Council (the “Code Council”) adopted the 2015 Editions of the Code Books published by the International Code Council (the “2015 I-Codes”) as amended by the 2017 Uniform Code Supplement as the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”) effective between July 2017 and 5/12/2020. The Uniform Code included both the 2015 International Building and Residential Codes. Additionally, the 11/16/2018 Amended Verified Complaint and 6/27/2019 deposition testimony of Mr. John Lepper indicated the following: he was the owner of the property at 59 Cockenoe Avenue in Babylon, New York; he initially began construction of the subject structure on or about April/May 2018; he filed an application for a construction permit (a Building Permit Form) with the Village of Babylon, New York on approximately 5/10/2018. As such, the Uniform Code was effective in the Village of Babylon, New York during both the time that Mr. Lepper initially began construction as well as when Mr. Lepper filed an application for a construction permit. Furthermore, Section 116.1 of the 2015 International Building Code, entitled “*Conditions*,” stated the following:

“Conditions. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or that constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.”

Similarly, Section 101.2.6.7 of the New York State Building Standards and Codes 2017 Uniform Code Supplement, entitled “*Unsafe structures and equipment*,” stated the following:

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“101.2.6.7 Unsafe structures and equipment. If during the inspection of a premises, building or structure, or any building system or equipment, in whole or in part, there exists a clear and imminent threat to human life, safety or health, the authority having jurisdiction charged with the administration and enforcement of the Uniform Code shall exercise its powers in due and proper manner so as to extend to the public protection from the hazards of threat to human life, safety, or health.

101.2.6.7.1 Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or to the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire; or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, or structurally unsafe; or is of such faulty construction or unstable foundation that partial or complete collapse is possible. A vacant structure that is not secured against unauthorized entry as required by Section 311 of the 2015 IFC shall be deemed unsafe.

101.2.6.7.2 Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or any other equipment on the premises or within the structure that is in such disrepair or condition that the equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

101.2.6.7.3 Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the structure is unsafe, unlawful, or because of the degree to which the structure is in disrepair or lacks maintenance or the location of the structure constitutes a hazard to the occupants of the structure or to the public.

101.2.6.7.4 Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than are permitted under the 2015 IFC, or was erected, altered or occupied contrary to law.

101.2.6.7.5 Closing of vacant structures. If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, a placard of condemnation shall be posted on the premises, and the structure shall be closed up so as not to be an unattractive nuisance.

101.2.6.7.6 Prohibited occupancy. No person shall occupy a placarded structure.

101.2.6.7.6.1 Placard removal. The placard shall be removed whenever the defect or defects on which the condemnation and placarding action were based have been eliminated.

101.2.6.7.7 Notice. Whenever a structure or equipment has been condemned under the provisions of this section, a notice shall be posted in a conspicuous place in or about the structure affected by such notice. If the

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notice pertains to equipment, it shall also be placed on the condemned equipment.

101.2.6.7.8 Imminent danger. *The occupants shall vacate premises when there exists:*

- 1. Imminent danger of failure or collapse of a building or structure which endangers life;*
- 2. A structure where the entire or part of the structure has fallen and life is endangered by the occupation of the structure;*
- 3. Actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials; or*
- 4. Operation of defective or dangerous equipment. There shall be posted at each entrance to such structure a notice reading as follows: 'This Structure is Unsafe and its Occupancy Has Been Prohibited by the Code Enforcement Official.' It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or demolishing the structure.*

There shall be posted at each entrance to such structure a notice reading as follows: 'This Structure is Unsafe and its Occupancy Has Been Prohibited by the Code Enforcement Official.' It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or demolishing the structure.

101.2.6.7.9 Fire department notification. *The fire chief shall notify the code enforcement official of any fire or explosion involving any structural damage, fuel-burning appliance, chimney, flue or gas vent."*

Finally, the following was observed during the 7/31/2020 site inspection: the subject structure contained four framed walls with a gable roof atop the platform and did not appear to contain a means of ingress/egress as access to the interior could only be achieved through openings (i.e. "windows") in the structure's exterior walls via the use of an appropriately placed extension ladder; the subject structure was elevated above the adjacent grade and employed an approximately 2 foot, 2 inch diameter natural, organic object (i.e. a tree) located in the rear yard of the subject property as a foundation; the centerline of the tree containing the structure (the subject tree) was located 13 feet, 1 inch from the interior edge of the concrete curb along Wampum Road and 4 feet, 6 inches from wood fencing along what appeared to be the property line adjacent to Wampum Road; the centerline of the subject tree was located approximately 9 feet, 10-1/2 inches east and 25 feet north of the single familiar residence on the property; the centerline of the subject tree was located approximately 22 feet, 9-1/2 inches south of the detached two-car garage on the property; the connections between the horizontal wood members and vertical wood members of the

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braces had been constructed with non-traditional framing methods and did not contain fasteners; the northeast brace vertical member was non-continuous with a lower section containing two additional lag bolts installed in 1-1/4 inch deep countersunk holes and was not in contact with, nor supporting, a upper section or the structure above; the southwest brace displayed evidence of displacement due to dead load (i.e. gravity/self-weight) consistent with an ongoing/progressive structural failure at the non-traditional connection between the horizontal and vertical wood members; a wood shim had been installed between the southwest brace vertical member and the subject tree and lag bolt at that member was noted to not have been fully engaged during installation; chairs, a hammock and children's toys were observed within the structure at the time of the inspection; the four wood braces all displayed staining consistent with exposure to exterior elements over an extended period of time and did not display evidence of painting or a surface coating (i.e. sealant, pressure treated lumber, etc.); nominal wood 2 inch by 4 inch wall framing studs bore markings/stamping indicating the material (i.e. wood/lumber) had not been pressure-treated and no other evidence was observed that the members were otherwise protected from the exterior elements to which they were exposed (i.e. painting, sealant, etc.); the interior of the subject structure contained exposed electrical wiring. As such, the writer determined the following: the subject structure appeared to contain inadequate means of egress facilities and did not contain minimum safeguards to protect or warn occupants in the event of fire; the subject structure contained unsafe equipment; the subject structure appeared to be dangerous to human life and/or the public welfare and was observed to contain faulty construction or unstable foundation as the foundation of the structure was not constructed of materials with known or specified physical properties, as well as that the radius of collapse of the tree and structure due to overturning of the sub-surface support system included residential structures and a public roadway⁶; the subject structure appeared to be dangerous to human life and/or the public welfare and damaged, decayed, dilapidated, or structurally unsafe as wood framing members and connections forming the structure's flooring supports had displaced as a result of material self-weight due to the force of gravity; the subject structure appeared to involve an illegal or improper occupancy and had been erected, altered or occupied contrary to law as no evidence has been reviewed to conclude that either a Construction Permit or Certificate of Occupancy had been issued by the governing municipal entity (i.e. the Village of Babylon, New York); the subject structure appeared to have been inadequately maintained and contain faulty construction as no evidence was observed of treatment of wood framing members for protection from the exterior elements to which they were exposed and connections between wood framing members were inconsistent with connection types specified in applicable codes, standards and ordinances⁷. Therefore, the writer concluded that the condition of the

⁶ The writer noted that the location of the subject structure (i.e. elevated above the adjacent grade and supported by the subject tree) was such that lateral forces due to wind would be applied to the surfaces of the structure's framed walls/roof and bear upon the subject tree and its unknown/unidentified sub-surface support system (i.e. the tree's root system).

⁷ The National Design Specification [NDS] for Wood Construction with 2015 Supplement [ANSI AWC NDS-2015]

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subject structure observed during the 7/31/2020 site inspection appeared to be consistent with an unsafe condition/structure as well as dangerous to the life, health, property or safety of the public or to the occupants of the structure and may present a clear and imminent threat to human life, safety or health as defined by Section 116.1 of the 2015 International Building Code, entitled “*Conditions*,” and Section 101.2.6.7 of the New York State Building Standards and Codes 2017 Uniform Code Supplement, entitled “*Unsafe structures and equipment*.”

7. The allegation that “*there is no evidence the Village of Babylon ever adopted the International Building Code nor incorporated its Section 116 as part of the Village of Babylon Code*” contained in the 11/16/2018 Amended Verified Complaint was misleading, speculative and without basis. In this regard, as addressed earlier in this report, The State of New York Fire Prevention and Building Code Council (the “Code Council”) adopted the 2015 Editions of the Code Books published by the International Code Council (the “2015 I-Codes”) as amended by the 2017 Uniform Code Supplement as the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”) effective between July 2017 and 5/12/2020. The Uniform Code included both the 2015 International Building and Residential Codes. Additionally, Chapter 96 of the Code of the Village of Babylon, entitled “*Building Construction and Fire Prevention*,” stated:

“§ 96-1 Purpose. This chapter shall provide the basic method for administration and enforcement of the New York State Uniform Fire Prevention and Building Code in the Village of Babylon and shall establish powers, duties and responsibilities in connection therewith.

§ 96-2 Enforcement officials. The Building Inspector and the Fire Inspector are hereby designated to administer and enforce the New York State Uniform Fire Prevention and Building Code within the Village of Babylon” (emphasis added).

As such, the writer determined that both the 2015 International Building Codes (i.e. the “*International Building Code*”) along with its incorporated Section 116, entitled “*Unsafe Structures and Equipment*,” had been adopted by the Code of the Village of Babylon and were applicable/enforceable to the subject structure at the time of its construction. Therefore, the writer concluded that the allegation that “*there is no evidence the Village of Babylon ever adopted the International Building Code nor incorporated its Section 116 as part of the Village of Babylon Code*” contained in the 11/16/2018 Amended Verified Complaint was misleading, speculative and without basis.

8. The writer reviewed the 2/20/2019 “*Preliminary Injunction-Copy of Architect’s Report*” Letter by Mr. Cory H. Morris, Esq., with attachments, as well as the 3/1/2019 “*Treehouse*”

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Letter by James R. Brown, Ph.D., P.E. Dr. Brown's 3/1/2019 "Treehouse" Letter alleged, in relevant part, the following:

"I find that the treehouse structure supported in the tree is structurally stable and meets code loading for wind, snow and LL [live load] as prescribed by IBC and local requirements. In other words the structure [a.k.a. the "treehouse structure"] is able to withstand all weather-related events that are in accordance with code-induced loading criteria" (descriptions/emphasis added).

The writer concluded that Dr. Brown's conclusion was misleading, speculative and without basis. In this regard, the 2/18/2019 "Tree House As-Built" Drawing Sheet [T-100.00; Project 15-155], bearing the signature and seal of James R. Brown, Ph.D., P.E., included/specified the following: that the diagonal brace and horizontal members of the "support arm" were nominal 4 inch by 4 inch and 4 inch by 6 inch wood members, respectively; no connection was specified between the 4 inch by 6 inch horizontal timber and 4 inch by 6 inch vertical timber at each "support arm"; the document included no written notations and/or specifications indicating the building code or loading conditions by which the structure had been evaluated; the document included no information regarding evaluation of the structure's foundation (i.e. the "spruce" tree, subsurface root system, surrounding subsurface material [soils], etc.) or wood construction design standards applicable to the structure's construction. However, during the 7/31/2020 inspection it was determined that the diagonal brace and horizontal members of the "support arm" were, in actuality, nominal 4 inch by 6 inch and 10 inch by 3 inch wood members, respectively. Similarly, the seven (7) pages of handwritten notes/calculations/sketches entitled "Treehouse-Calcs Structure," understood to have been produced by James R. Brown, Ph.D., P.E., included/specified the following: the analysis only evaluated the structure under conditions of "dead" load and the structure was not evaluated under other loading conditions (i.e. "live load", "wind load", etc.); that a "wind" speed of 115 miles per hour under Category "Exposure B" was to be included in design loads for the evaluation of the structure; the document included no calculations evaluating connections between wood framing members or the subject structure foundation (i.e. the "spruce" tree, subsurface root system, surrounding subsurface material [soils], etc.); the calculations evaluated the bending capacity of the horizontal member of the "support arm" as a nominal 4 inch by 6 inch wood member and not the constructed condition of a nominal 10 inch by 3 inch wood member observed during the writer's inspection. It should be noted that Table 1.5-1 of the American Society of Civil Engineers/Structural Engineering Institute [ASCE/SEI] Standard 7-10, entitled "Minimum Design Loads for Buildings and Other Structures," identified in Chapter 35 of the 2015 International Building Code, entitled "Reference Standards" specified that the subject structure would be analyzed under Risk Category III ["Buildings and other structures, the failure of which could pose a substantial

Re: Lepper v. Village of Babylon, et al.
December 28, 2020
Page 31 of 32

risk to human life”]⁸. Moreover, Figure 26.5-1B of ASCE/SEI 7-10 specified that the location of the subject property required analysis of the subject Risk Category III structure under an applied wind loading velocity of 140 miles per hour⁹. As such, the writer determined that: Dr. Brown’s 2/18/2019 “*Tree House As-Built*” Drawing Sheet misrepresented the dimensions/properties of the subject structure’s wood framing members and plan dimensions; Dr. Brown’s “*Treehouse-Calcs Structure*” calculations misrepresented the applicable 2015 International Building Code required applied wind loading for the structure; Dr. Brown’s “*Treehouse-Calcs Structure*” calculations did not analyze the subject structure or evaluate the foundation system supporting the structure and included calculations regarding the capacities of structural members that were unrelated to an analysis of the subject structure. The writer additionally noted that the observation made during the 7/31/2020 site inspection that the southwest brace displayed evidence of displacement due to dead load (i.e. gravity/self-weight) consistent with an ongoing/progressive structural failure at the non-traditional connection between the horizontal and vertical wood members would reinforce that Dr. Brown’s calculations and certification relied upon an improper basis for the analysis of the structure. Therefore, the writer concluded that: Dr. Brown’s calculations and certification relied upon an improper basis for the analysis of the structure under applied wind loading and did not demonstrate that the foundation of the structure was either stable or structurally capable of withstanding required design loading in accordance with applicable codes, standards and ordinances; and Dr. Brown’s conclusion was misleading, speculative and without basis.

CONCLUDING OPINIONS

Based upon the writer’s 7/31/2020 site inspection, review of file material and technical research, along with the writer’s education, licensure, experience and the foregoing, the writer offers the following concluding opinions to a reasonable degree of engineering certainty: the subject structure (i.e. the “treehouse”) was a “*building*” as defined by Section 365-3 of the Code of the Village of Babylon, entitled “*Definitions and word usage*”; the construction of the subject structure (i.e. the “treehouse”) required a construction permit issued by the Building Inspector of the Village of Babylon in accordance with Section 365-26 of the Code of the Village of Babylon, entitled “*Permit required; material to be submitted*”; Section 365-26(C)(3) of the Code of the Village of Babylon was neither applicable nor enforceable to the subject structure (i.e. the “treehouse”); a request by the Village of Babylon Building Official for construction documents prepared by a New York State registered architect or licensed professional engineer along with such other information and documentation as may be necessary to determine whether the proposed work conformed with the Uniform Code and Energy Code was in accordance with the requirements of the Code of the Village of Babylon, the Uniform Code and 19 NYCRR Part 1203;

⁸ The cited sections would also be consistent with the specifications/requirements of Section 1604.5 and Table 1604.5 of the 2015 International Building Code (i.e. the New York State Uniform Fire Prevention and Building Code).

⁹ The cited Figure would also be consistent with the specifications/requirements of Figure 1609.3(2) of the 2015 International Building Code (i.e. the New York State Uniform Fire Prevention and Building Code).

Re: Lepper v. Village of Babylon, et al.
December 28, 2020
Page 32 of 32

the installation of electrical wiring within the subject structure (i.e. the “treehouse”) violated Chapter 133 of the Code of the Village of Babylon entitled, “*Electrical Inspection*”; the condition of the subject structure observed during the 7/31/2020 site inspection appeared to be consistent with an unsafe condition/structure as well as dangerous to the life, health, property or safety of the public or to the occupants of the structure and may present a clear and imminent threat to human life, safety or health as defined by Section 116.1 of the 2015 International Building Code, entitled “*Conditions*,” and Section 101.2.6.7 of the New York State Building Standards and Codes 2017 Uniform Code Supplement, entitled “*Unsafe structures and equipment*”; the allegation that “*there is no evidence the Village of Babylon ever adopted the International Building Code nor incorporated its Section 116 as part of the Village of Babylon Code*” contained in the 11/16/2018 Amended Verified Complaint was misleading, speculative and without basis; Dr. Brown’s calculations and certification relative to the matter relied upon an improper basis for the analysis of the structure under applied wind loading and did not demonstrate that the foundation of the structure was either stable or structurally capable of withstanding required design loading in accordance with applicable codes, standards and ordinances; and, Dr. Brown’s conclusion was misleading, speculative and without basis.

The writer reserves the right to supplement or amend this report should any additional information become available for review. Should you wish to discuss the matter please do not hesitate to contact the writer.

Very truly yours,



Joseph M. Danatzko, P.E.
Engineering Consultant

JMD/jl

EXHIBIT “C”



AEL - No. 1



AEL - No. 2



AEL - No. 3



AEL - No. 4



AEL - No. 5



AEL - No. 6



AEL - No. 7



AEL - No. 8



AEL - No. 9



AEL - No. 10



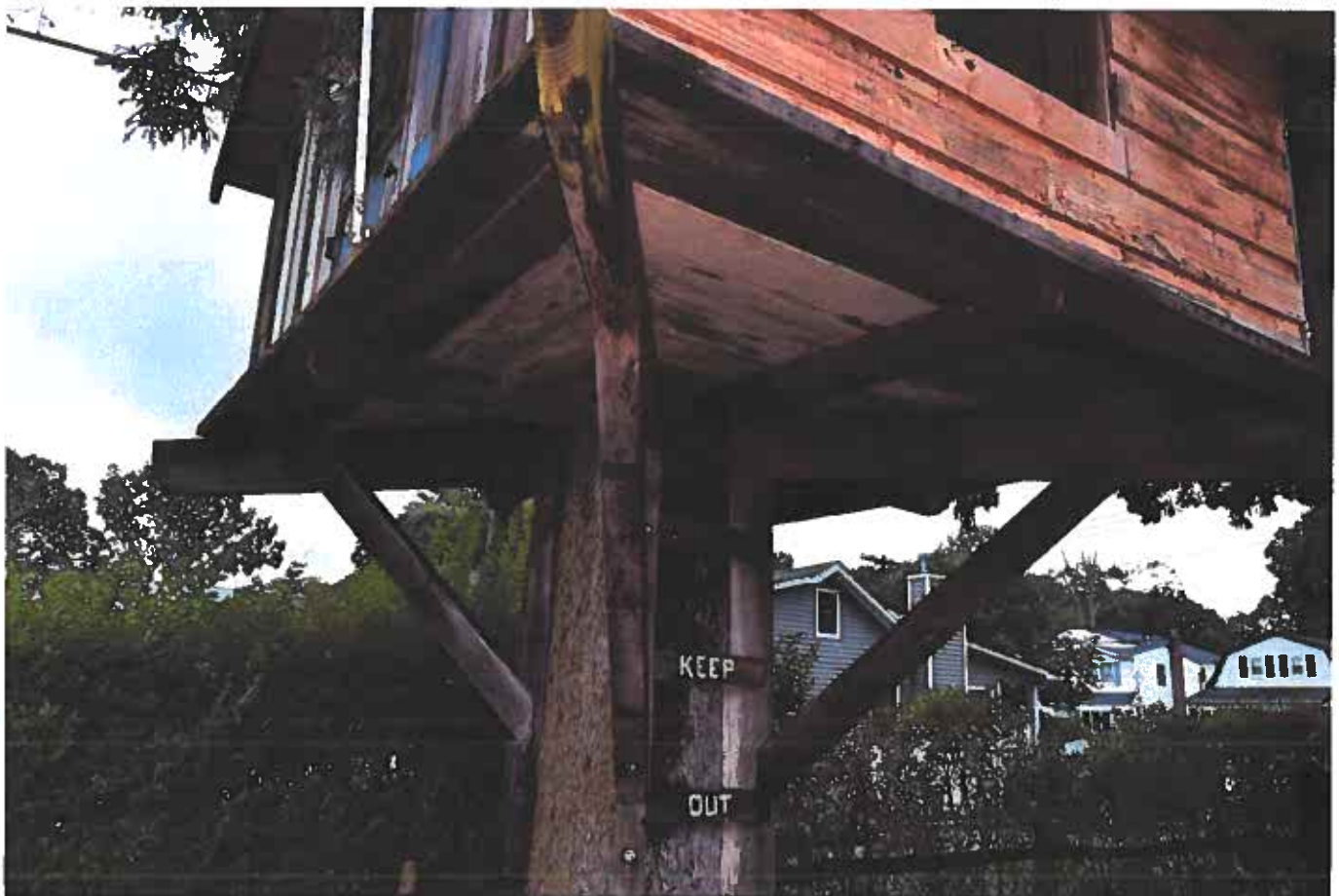
AEL - No. 11



AEL - No. 12



AEL - No. 13



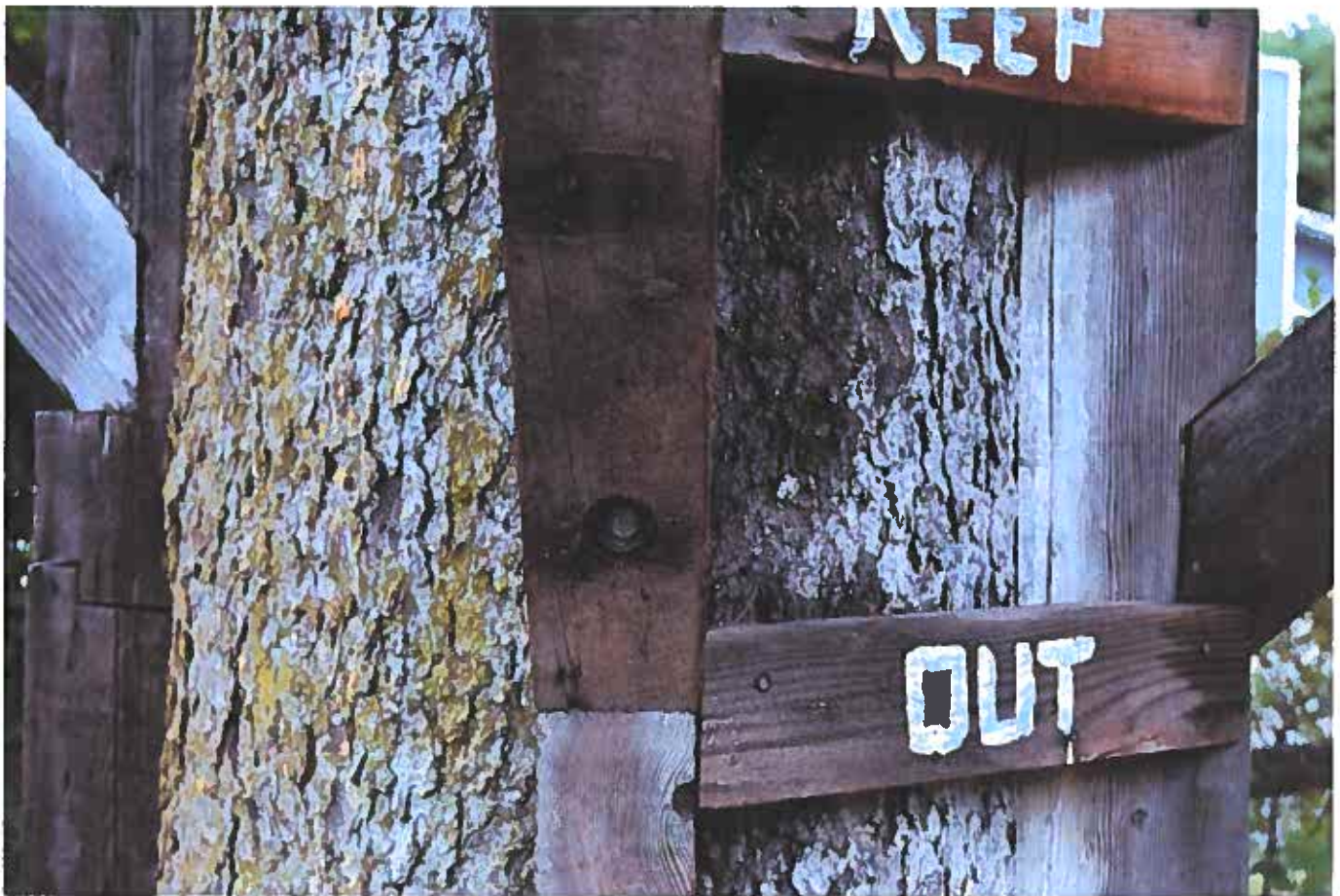
AEL - No. 14



AEL - No. 15



AEL - No. 16



AEL - No. 17



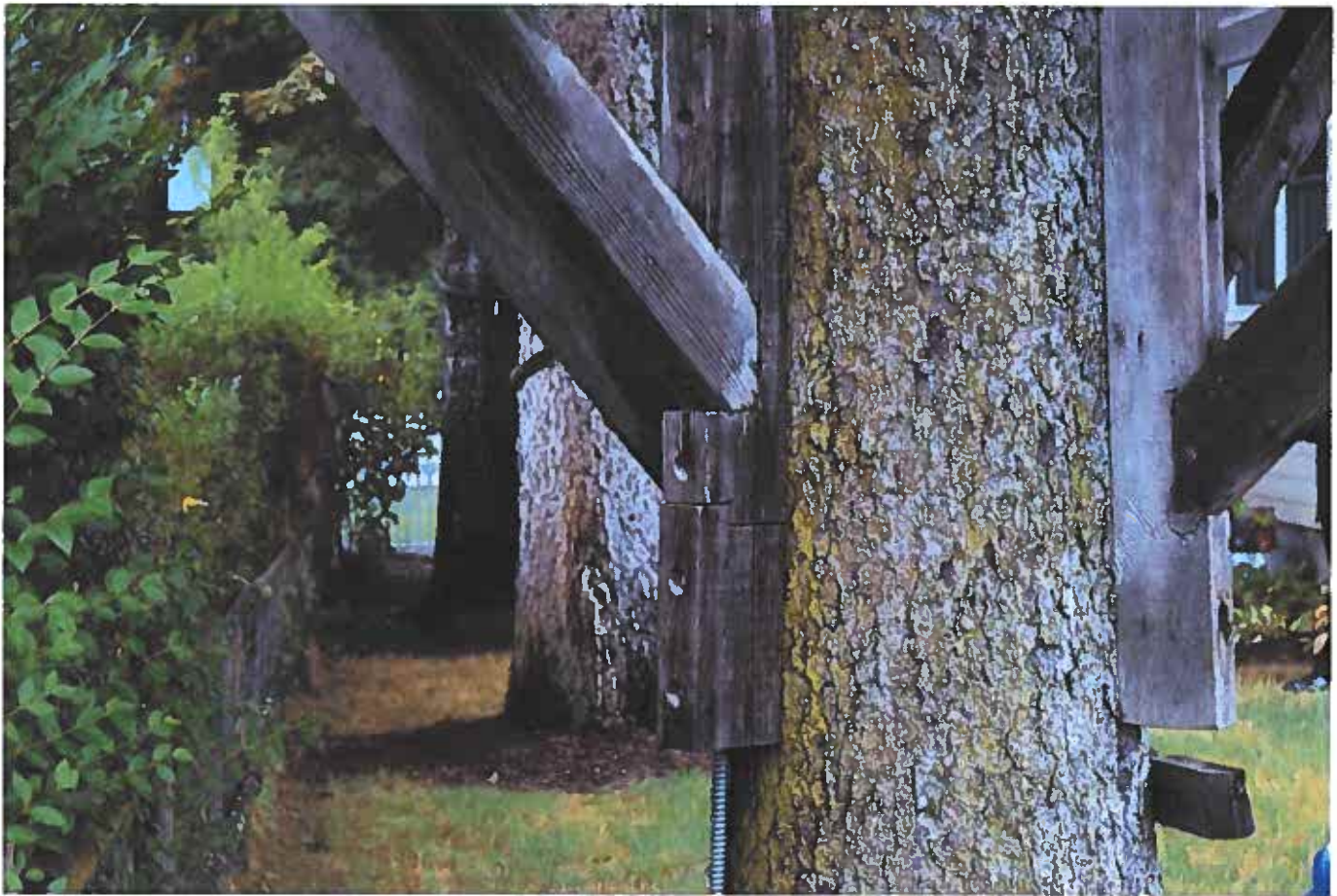
AEL - No. 18



AEL - No. 19



AEL - No. 20



AEL - No. 21



AEL - No. 22



AEL - No. 23



AEL - No. 24

A close-up photograph of a wooden structure, likely a roof or wall. The image shows several weathered wooden beams and a dark, textured surface, possibly a thatched roof or a wall made of mud or plaster. The wood is aged and shows signs of wear. The background is slightly blurred, showing green foliage.



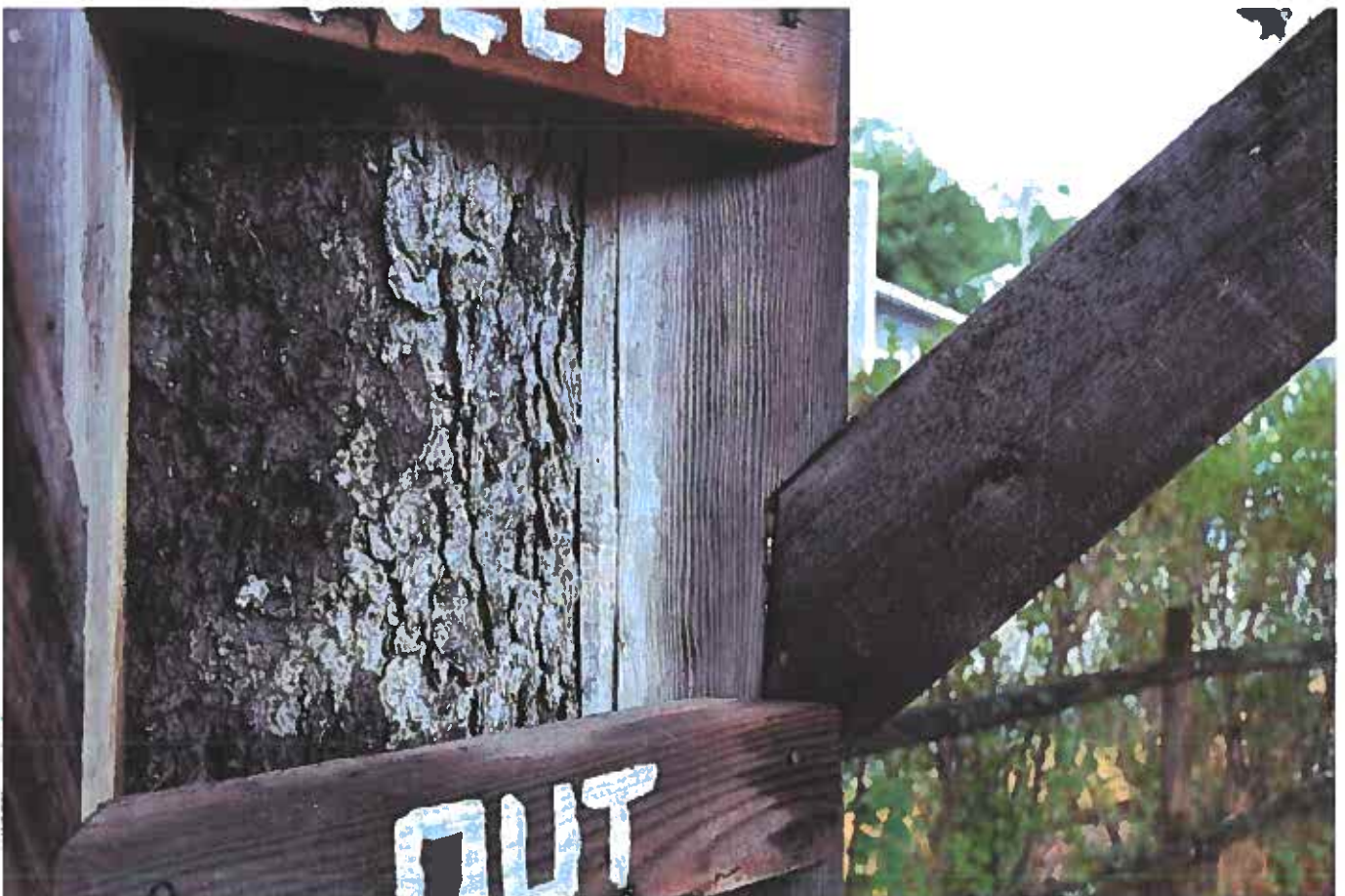
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AEL - No. 28



AEL - No. 29



AEL - No. 30



AEL - No. 31



AEL - No. 32

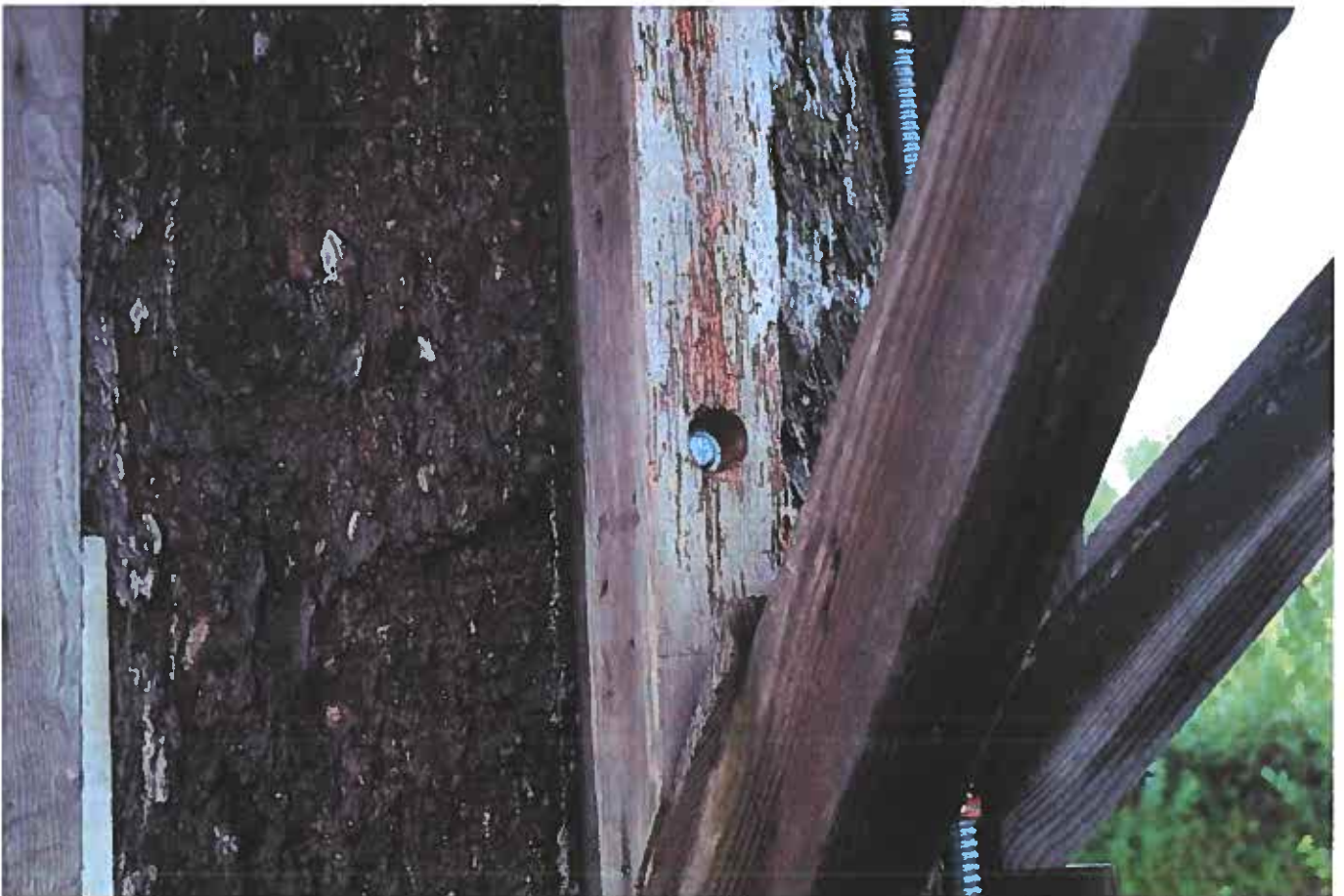


VEL - No. 33





AEL - No. 35



AEL - No. 36



AEL - No. 37



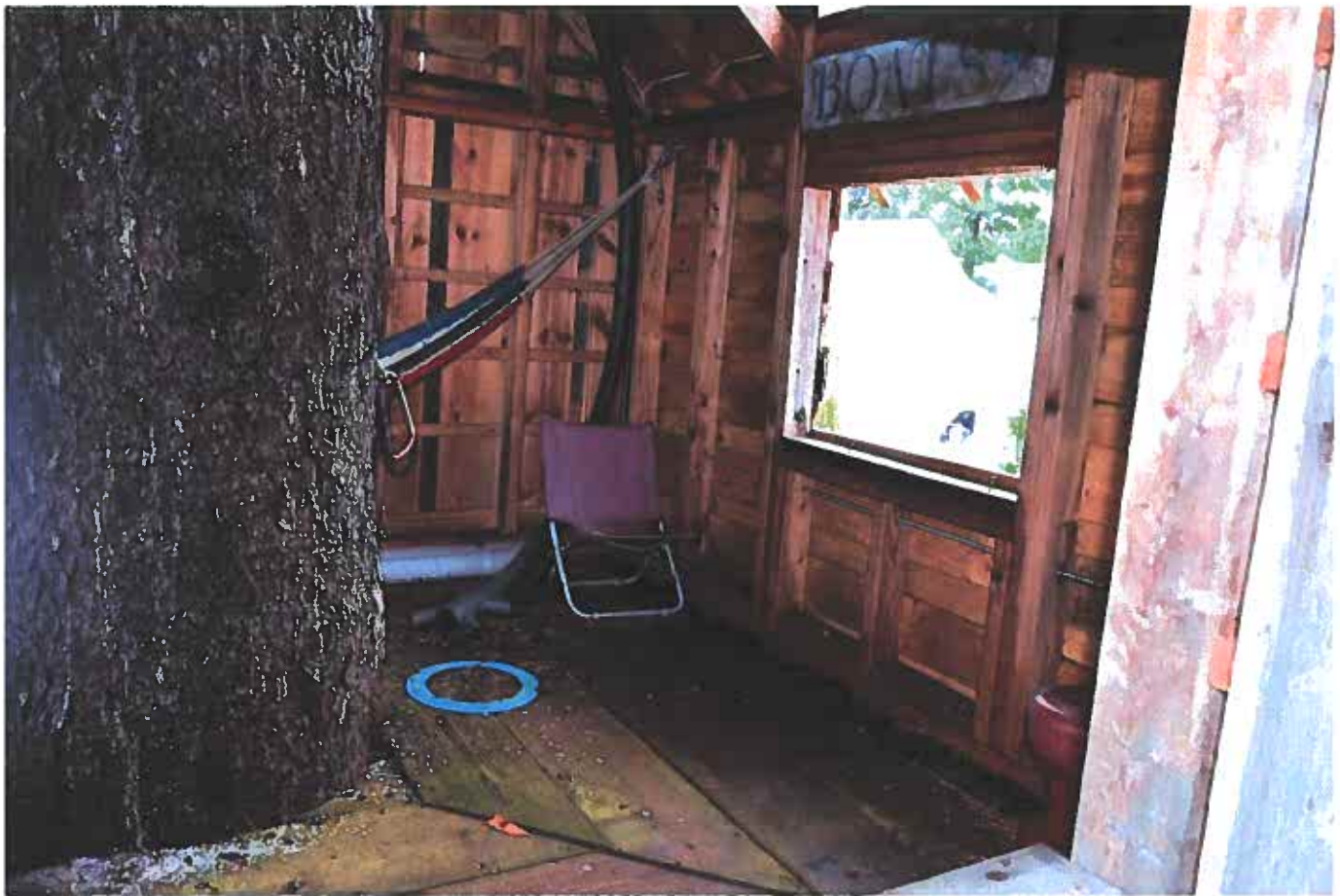
AEL - No. 38



AEL - No. 39



AEL - No. 40



AEL - No. 41



AEL - No. 42



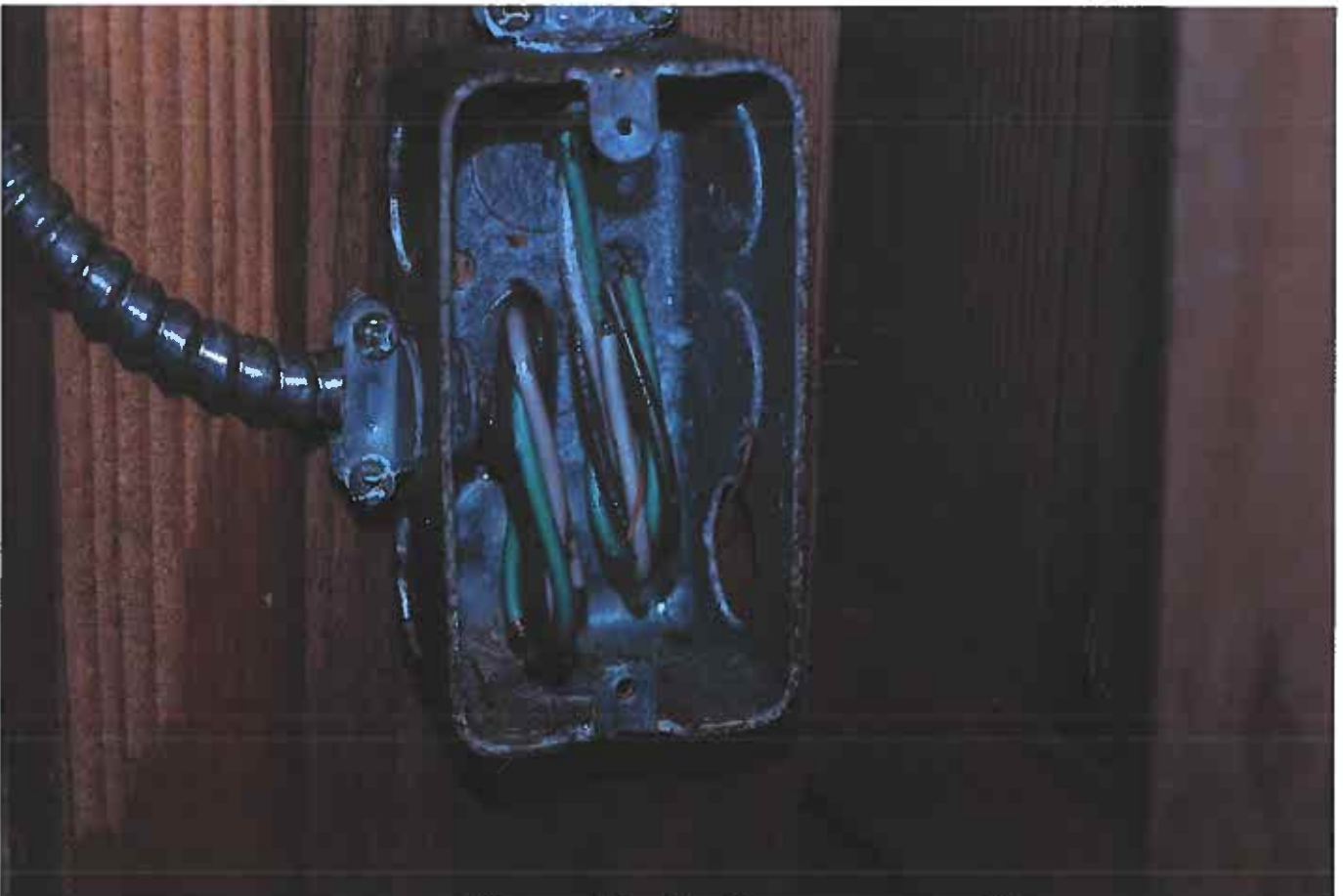
AEL - No. 43



AEL - No. 44



AEL - No. 45



AEL - No. 46



AEL - No. 47



AEL - No. 48



AEL - No. 49



AEL - No. 50



AEL - No. 51



AEL - No. 52



AEL - No. 53



AEL - No. 54



AEL - No. 55

EXHIBIT “X”

2:18-cv-07011 JFB-GRB

United States District Court

Eastern District of New York

JOHN LEPPER AND NOELLE LEPPER,

Plaintiffs

—against—

VILLAGE OF BABYLON; and, RALPH SCORDINO, Mayor, KEVIN MULDOWNEY, Deputy Mayor, ROBYN SILVESTRI, Village Trustee, TONY DAVIDA, Village Trustee, MARY ADAMS, Village Trustee; STEPHEN FELLMAN, Village of Babylon Building Inspector; SUZANNE SCHETTINO, Department of Public Works; GERARD GLASS, Esq., Village of Babylon Attorney; DEBORAH LONGO, Planning Board, Village of Babylon, each individually and in their official capacity, and John and/or Jane Doe, unnamed, unidentified complainants,

Defendants

PLAINTIFFS' EXHIBIT 1

CORY H. MORRIS

Attorney for Defendant

VICTOR JOHN YANNACONE, JR., of counsel

ZONING BOARD OF APPEALS
Bruce E. Humenik, *Chairman*
John J. Conroy, *Secretary*
Christopher Reach
Rachel A. Scelfo
Frank Seibert
Jeffrey C. Weber



153 West Main Street
Babylon Village
New York 11702
(631) 669-1500

November 18, 2016

Mr. Mark Anthony Munisteri
Mark Anthony Architects
1563 Bellmore Avenue
Bellmore, NY 11710

RE: Baldauf, 50 Thompson Avenue, Babylon, NY

Dear Mr. Munisteri,

After due consideration of the testimony given and evidence submitted, it was voted by the Board to **GRANT** this amended application for permission to maintain a garage requiring a variance to reduce the minimum side yard setback of 15 feet required for the garage to 5.27 feet proposed and to reduce the minimum side yard setback for the accessory building from 15 feet required to 3.67 feet proposed; and to **DENY** the minimum side yard setback of 15 feet required for the tree house to 7.2 feet proposed; the increase of the height limits of the accessory building from 15 feet permitted to 21.1 feet proposed; and the increase of the square feet permitted for the tree house/playground from 90 square feet permitted to 192 square feet proposed. Property located in Residence A-11 District. Suffolk County Real Property Tax Map District 0102, Section 13, Block 2, Lot 6. Application made in accordance with Section 365-13.

The variance relief requested by the Applicant to maintain the tree house and build an accessory building requiring a height variances are in the nature of Area Variances and the standards of Village Law Article 7, Section 712b[3], are applicable. Accordingly, in making its determination, the Zoning Board of Appeals is required to take into consideration the benefit to the Applicant, if the Variances are granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In short, the legislature has dictated that a balance test be applied. The statute further requires that in making such determination, the Board shall also consider the following:

1. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the Area Variances.

NOV 21 2016

One copy provided to parent @ 8.75

2. Whether the benefits sought by the Applicants can be achieved by some method feasible for the applicant to pursue other than Area Variances.
3. Whether the requested Area Variances are substantial.
4. Whether the proposed Variances will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or community, and
5. Whether the alleged difficulty was self-created.

The consideration as to whether or not an alleged difficulty is self-created is by virtue of the statute to be considered as relevant, "but shall not necessarily preclude the granting of an Area Variance."

Pursuant to the Village Code Section 248-32, the Board of Appeals is required to consider prior to granting an approval, the criteria set forth in Section 248-32 B.1[a] through [d] and 2[a] through [1].

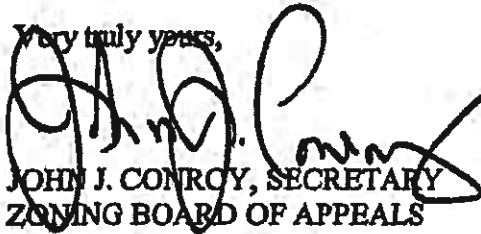
The Board feels that the request for the variances for the tree house (height, side yard, and area) the proposed accessory building would not be in keeping with area zoning or with the character of the neighborhood. Furthermore, there are alternative means of gaining the benefits sought under this request without the need for these variances. In particular the Board finds that:

1. The variances to reduce the minimum side yard setback of 15 feet required for the tree house to 7.2 feet proposed, the increased height from 15 ft. allowed to 21ft. proposed and to increase the square footage permitted for the tree house/playground from 90 square feet permitted to 192 square feet proposed would all be undesirable changes having an adverse impact. The limitations as to height size and setback for the accessory structure are intended to preserve open space and limit intensity of use, especially within close proximity to adjoining properties. To grant these variances, especially in the aggregate for a single accessory structure is contrary to the purposes of the ordinance.
2. The benefits can otherwise be achieved by the Applicant. In particular the applicant can reduce the size and height of the accessory structure and relocate same.
3. The requested variances are each substantial and in the aggregate the variances are even more significant because they all relocate to the same structure.

4. The variances if granted would adversely affect the aesthetic characteristics having a negative impact on the surrounding properties.
5. The difficulty is self-created, arising only by reason of the Applicant's desire to construct a tree house and an accessory building which exceeds the height and area limits and to locate the structure closer to the side yard than permitted.

This constitutes the decision of the Board.

Very truly yours,



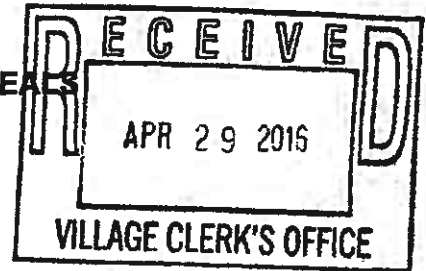
JOHN J. CONROY, SECRETARY
ZONING BOARD OF APPEALS

JJC/ke

Enclosure

cc: Ralph A. Scordino, Mayor
Steve Fellman, Bldg. Inspector
James Slack, Planning Board Chairman
Patricia C. Carley, Village Clerk
David Roth, Esq.

VILLAGE OF BABYLON
APPLICATION TO THE ZONING BOARD OF APPEALS
(page 1 of 4)



COUNTY OF SUFFOLK

SS:

STATE OF NEW YORK

Mark Anthony Munisteri

being duly sworn,

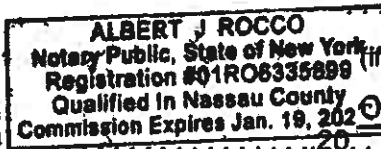
deposes and says that he/she (or) they is/are Agent of Owner of the property described below.
Owner or Agent of owner

That all statements made in this application are true to the best of his (or) her knowledge and belief, except as to the matters therein stated to be alleged on information and belief and as to the matters he (or) she believes the same to be true. He (or) she understands the requirements of this application with regards to the submittal of plot plans, other drawings and the posting of public notices.

Sworn before me this

29

Day of April



(If owner is applicant, all owners must sign)

Albert Rocco
Notary Public, Suffolk County

In the Matter of the Application of:

Applicant's Name: <u>Mark Anthony Architects</u>		Owner of Property if Other Than Applicant Name: <u>Harold Baldauf</u>	
Address: <u>1563 Bellmore Ave</u> <u>Bellmore NY 11710</u>		Address: <u>50 Thompson Ave</u> <u>Babylon NY 11702</u>	
Telephone No: <u>516-409-1900</u>		Alternate Telephone No: _____	
Property Address or Description of Location: <u>50 Thompson Ave</u> <u>Babylon, NY 11702</u>			

FOR VILLAGE CLERK ONLY:

Zoned: A-11 Section 13 Block 2 Lot 6

For Plans Examiner Only:

Plans Reviewed _____ No Variance Required _____ Variance Required _____ (see attached comments)
(date)

VILLAGE OF BABYLON**APPLICATION TO THE BOARD OF APPEALS**

(page 2 of 4)

Description of relief sought, attach separate sheet if necessary:

We are asking for a minimum side yard setback of 7.2' for the treehouse, 5.27' for the garage and 3.67' for the shed. We are also requesting a shed height of 21.1' and a treehouse/playground of 192 s.f.

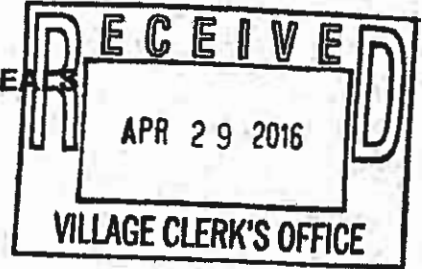
***** PLEASE NOTE *****

Variances required will be included whether or not listed above, as deemed necessary, and as determined by the Site Plans Examiner and the Zoning Board of Appeals, after review of the plans submitted with this application. The legal notice for this application will be derived based on the plans submitted.

1. Has a building permit been refused by Building Inspector? *No*
2. Is there a school, house of worship, or hospital within 500 ft. of this premises? *No* .
3. Approximate cost of work this application is made for? \$ *\$45,000*
4. Is this premises with 500 feet of (Answer Yes or No):
 - No* . . . Boundary of any Village or Town
 - No* . . . Boundary of any existing or proposed County, State, or Federal park.
 - No* . . . The right of way of any existing or proposed County or State parkway, thruway, expressway, road or highway.
 - No* . . . The existing or proposed right of way of any stream or drainage Channel owned by the County or for which the County has established Channel lines.
 - No* . . . The existing or proposed boundary of any other County, State or Federal owned land.
 - Yes* . . The Atlantic Ocean, Long Island Sound, any bay in Suffolk County, Or estuary of any of the foregoing bodies of water.

VILLAGE OF BABYLON

APPLICATION TO THE ZONING BOARD OF APPEALS
(page 1 of 4)



COUNTY OF SUFFOLK

SS:

STATE OF NEW YORK

Mark Anthony Munisteri

being duly sworn,

deposes and says that he/she (or) they is/are Agent of Owner of the property described below.
Owner or Agent of owner

That all statements made in this application are true to the best of his (or) her knowledge and belief, except as to the matters therein stated to be alleged on information and belief and as to the matters he (or) she believes the same to be true. He (or) she understands the requirements of this application with regards to the submittal of plot plans, other drawings and the posting of public notices.

Sworn before me this

29 Day of April

ALBERT J. ROCCO
Notary Public, State of New York
Registration #01RO6335899
Qualified in Nassau County
Commission Expires Jan. 19, 2020

(if owner is applicant, all owners must sign)

Albert J. Rocco
Notary Public, Suffolk County

In the Matter of the Application of:

Owner of Property if Other Than Applicant

Applicant's Name: Mark Anthony Architects Name: Harold Baldauf
Address: 1563 Bellmore Ave Address: 50 Thompson Ave
Bellmore NY 11710 Babylon NY 11702

Telephone No: 516-409-1900 Alternate Telephone No: _____

Property Address or Description of Location: 50 Thompson Ave
Babylon, NY 11702

FOR VILLAGE CLERK ONLY:

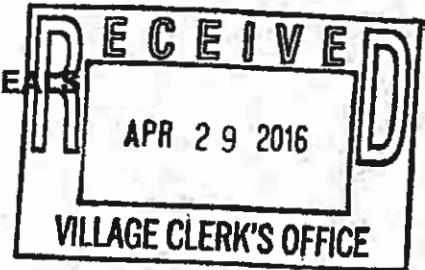
Zoned: A-11 Section 13 Block 2 Lot 6

For Plans Examiner Only:

Plans Reviewed _____ No Variance Required _____ Variance Required _____ (see attached comments)
(date)

.

VILLAGE OF BABYLON
APPLICATION TO THE ZONING BOARD OF APPEALS
 (page 1 of 4)



COUNTY OF SUFFOLK

SS:

STATE OF NEW YORK

Mark Anthony Munisteri

being duly sworn,

deposes and says that he/she (or) they is/are Agent of Owner of the property described below.
 Owner or Agent of owner

That all statements made in this application are true to the best of his (or) her knowledge and belief, except as to the matters therein stated to be alleged on information and belief and as to the matters he (or) she believes the same to be true. He (or) she understands the requirements of this application with regards to the submittal of plot plans, other drawings and the posting of public notices.

Sworn before me this

29 Day of April

ALBERT J. ROCCO
 Notary Public, State of New York
 Registration #01RO6335699
 Qualified in Nassau County
 Commission Expires Jan. 18, 2021

(If owner is applicant, all owners must sign)

Albert J. Rocco
 Notary Public, Suffolk County

In the Matter of the Application of:

Applicant's Name: <u>Mark Anthony Architects</u>		Owner of Property if Other Than Applicant Name: <u>Harold Baldauf</u>	
Address: <u>1563 Bellmore Ave</u> <u>Bellmore NY 11710</u>		Address: <u>50 Thompson Ave</u> <u>Babylon NY 11702</u>	
Telephone No: <u>516-409-1900</u>		Alternate Telephone No: _____	
Property Address or Description of Location: <u>50 Thompson Ave</u> <u>Babylon NY 11702</u>			

FOR VILLAGE CLERK ONLY:

Zoned: A-11 Section 13 Block 2 Lot 6

For Plans Examiner Only:

Plans Reviewed _____ No Variance Required _____ Variance Required _____ (see attached comments)
 (date)

VILLAGE OF BABYLON

APPLICATION TO THE BOARD OF APPEALS

(page 2 of 4)

Description of relief sought, attach separate sheet if necessary:

We are asking for a minimum side yard setback of 7.2' for the treehouse, 5.27' for the garage and 3.67' for the shed. We are also requesting a shed height of 21.1' and a treehouse/playground of 192 s.f.

*** PLEASE NOTE ***

Variances required will be included whether or not listed above, as deemed necessary, and as determined by the Site Plans Examiner and the Zoning Board of Appeals, after review of the plans submitted with this application. The legal notice for this application will be derived based on the plans submitted.

1. Has a building permit been refused by Building Inspector? *No*.....
2. Is there a school, house of worship, or hospital within 500 ft. of this premises? *No*..
3. Approximate cost of work this application is made for? \$ *\$45,000*.....
4. Is this premises with 500 feet of (Answer Yes or No):
 - No*... Boundary of any Village or Town
 - No*... Boundary of any existing or proposed County, State, or Federal park.
 - No*... The right of way of any existing or proposed County or State parkway, thruway, expressway, road or highway.
 - No*... The existing or proposed right of way of any stream or drainage Channel owned by the County or for which the County has established Channel lines.
 - No*... The existing or proposed boundary of any other County, State or Federal owned land.
 - Yes*... The Atlantic Ocean, Long Island Sound, any bay in Suffolk County, Or estuary of any of the foregoing bodies of water.

Office of the Village Clerk

Date received 11/10/16 REQUIRED RESPONSE DATE 11/17/16

DEPARTMENT to compile documents requested and to receive FOIL request:

(circle)

Village Clerk

Joel

Mayor

Treasurer

Building

ZBA

architectural Review

(circle who to get copies) other than Village Clerk and above:

Joel

Mayor

Treasurer

Building

Total pages _____ Fee due @ .25 per page _____

Date documents will be available if not on response date _____

Letter sent _____

APPLIC.

ON

C RECORDS



11:30 am

TO: RECORDS ACCESS OFFICER
VILLAGE OF BABYLON
153 W MAIN ST
BABYLON, NEW YORK 11702

I hereby apply to (check one)

Or

✓

12/6/16

- called to see if
check will be wanted
FOIL-LM

word:

① Architectural review
march 31, 2016

in regards to 50 Thompson Ave
Babylon, NY

Print name Jeanette ParentiMailing address 7 Tray place
Merick, NY 11566Daytime Phone # 516 510 7134Signature [Signature]Representing Harold Baldauf

② 6-15-16
Zoning Board Meeting minutes
in relation to 50 Thompson Ave
Babylon, NY

③ 7-20-16
Zoning Board Meeting minutes
in relation to 50 Thompson Ave
Babylon, NY

APPROVED _____ OR
DENIED _____ (FOR THE REASON CHECKED BELOW):

CONFIDENTIAL DISCLOSURE PART OF INVESTIGATORY FILES

UNWARRANTED INVASION OF PERSONAL PRIVACY

RECORD OF WHICH THIS AGENCY AS LEGAL CUSTODIAN CANNOT BE FOUND

EXEMPTED BY STATUTE OTHER THAN THE FREEDOM OF INFORMATION ACT

OTHER _____

SIGNATURE _____

TITLE _____

DATE _____

Notice: You have the right to appeal a denial of this application to the Board of Trustees, Village of Babylon, 153 West Main Street, Babylon, New York 11702, who must fully explain the reasons for such denial in writing seven days after receipt of an appeal.

I hereby appeal:

Signature _____ Date _____

EXHIBIT “Y”



CAMPOLO, MIDDLETON & MCCORMICK, LLP

May 26, 2021

BY ECF

Honorable Joan M. Azrack
U.S. District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

**Re: John Lepper, et al. v. Village of Babylon, et al.
2:18-cv-7011 (JMA)(AYS)**

Dear Judge Azrack:

This firm represents nonparty Linda Scordino in connection with a subpoena served by Plaintiffs' counsel, dated May 18, 2021 ("Subpoena"). The Subpoena seeks the production of "Proof of death of Ralph Scordino, including but not limited to a certified copy of a death certificate." The Subpoena is dated May 18, 2021, and returnable today, May 26, 2021.

Despite the brief return date, Mrs. Scordino has obtained a copy of the certified death certificate and intends to produce it. However, Mrs. Scordino respectfully requests that production of the certified death certificate be subject to a confidentiality agreement or protective order prohibiting Plaintiffs from disseminating it on social media, in the press, or any other public forums. Unfortunately, Plaintiffs have previously engaged in conduct designed to embarrass Mrs. Scordino and her family by, among other things, publishing deposition testimony and harassing them on social media. Mrs. Scordino and her family fear that Plaintiffs will resort to their harassing antics if they receive a copy of the death certificate.

I contacted Plaintiffs' counsel by e-mail on May 25, 2021, asking whether Plaintiffs would execute a confidentiality agreement. I have not received a response. Accordingly, Mrs. Scordino requests the Court issue a protective order prohibiting Plaintiffs from distributing the death certificate to any person not a party to this litigation or from publishing the death certificate or its contents on any form of social media or any other public forum.

Thank you for your consideration. We are available at the Court's convenience to address any questions.

Respectfully submitted,

**CAMPOLO, MIDDLETON
& MCCORMICK, LLP**

/s/ Patrick McCormick

By: Patrick McCormick, Esq.
Attorneys for Linda Scordino

cc: *All parties via ECF*



CAMPOLO, MIDDLETON & MCCORMICK, LLP

June 7, 2021

BY ECF

Honorable Joan M. Azrack
U.S. District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

**Re: John Lepper, et al. v. Village of Babylon, et al.
2:18-cv-7011 (JMA)(AYS)**

Dear Judge Azrack:

This firm represents nonparty Linda Scordino in connection with a subpoena served by Plaintiffs' counsel, dated May 18, 2021 ("Subpoena"). We write in response to Plaintiffs' counsel's letter dated May 28, 2021 (ECF Doc. No. 118), wherein he objects to the production of Mr. Scordino's certified death certificate conditioned on a confidentiality agreement or protective order.

As acknowledged by Plaintiffs' counsel in his letter, it is the public policy of New York State that certified death certificates are not publicly available for everyone to access. If they were, Plaintiffs' counsel would not have to resort to the subpoena process. In accordance with that policy, Mrs. Scordino merely requests that the status quo continue and that her late husband's certified death certificate not be made publicly available and its use limited to genuine litigation purposes only.

Additionally, Plaintiffs' and their counsel's history of harassing conduct provides further basis for shielding Mr. Scordino's certified death certificate from public viewing. During the deposition of Mr. Scordino in a case about the propriety of the tree house, Plaintiffs' counsel seized the opportunity to embarrass him by asking lines of completely irrelevant and inappropriate questions. For example, Mr. Scordino was questioned about his marriage, infidelity, and his wife's health issues.

Just months after Mr. Scordino's death, Plaintiff John Lepper posted on social media that he was willing to send the "video depositions" to anyone who asked and that he was "not afraid to share any and ALL of the public records involving me!" Based on this information and showing of prior conduct demonstrating how Plaintiffs and their counsel are willing to use public documents to harass and humiliate Mr. Scordino and his family, it leads to the conclusion that Plaintiffs may attempt to use the certified death certificate in the same way. This is not a fear a family should have when producing a death certificate in the course of litigation while they still grieve the loss of a loved one.

4175 Veterans Memorial Highway, Suite 400 | Ronkonkoma, New York 11779

Phone (631) 738-9100 | Fax (631) 738-0659 | www.cmmlp.com

June 7, 2021

Page 2

Thank you for your consideration. We are available at the Court's convenience to address any questions.

Respectfully submitted,

**CAMPOLO, MIDDLETON
& McCORMICK, LLP**

/s/ Patrick McCormick

By: Patrick McCormick, Esq.
Attorneys for Linda Scordino

cc: *All parties via ECF*

6/23/2021

(1) Vote for Babylon - Posts | Facebook



Vote for Babylon

@voteforbabylon · Political Organization

Learn More

sites.google.com



Vote for Babylon

February 22 ·

An update from the Vote for Babylon campaign.

Key take-aways:

1. We will NOT be on the official ballot on 3/16.
2. We are STILL RUNNING and plan to win via write-in campaign.
3. We need your support now more than ever! Message us if you can volunteer or make a contribution.

#writethemontheballot #votethemin

As you may know, a Village resident filed a formal Challenge with the Village Clerk and Suffolk County Board Elections (SCBOE) against the signature petitions we collected. Unfortunately, it was found that we used an incorrect nominating petition document (a party form instead of individual form.) We were hopeful that the BOE would overlook this minor error and would respect the intent of the 250+ residents that signed our petitions and wanted to see our four names on the 2021 ballot.

We were informed Saturday afternoon of the BOE's decision to uphold the challenge and deem our Nominating Petition invalid. Sadly, our names, as your candidates, will not appear on the official ballot and we will not be permitted to have poll watchers on site the day of the election to witness the counting. Despite following up regularly on this pending decision, our candidates were the last to be notified about this. The local newspapers, Village, Town and County elected officials and even our election attorney had the information before we did. This points to the fact that political connections WIN and average citizens who want to step up, do the right thing, and lead their communities are left behind.

This was a shock to us as it is widely known that elected officials have mutually agreed to NOT challenge election petitions this year given the challenge inherent with collecting in-person signatures during a global pandemic. It seems that this common courtesy was overlooked in our case.

We are certain our neighbor who filed this challenge did not act alone. The documents filed included information and detail above the experience level of the average layperson. We urge you to ask yourself: Who stands to gain from this filing and decision, and who loses with this decision? It is clear that the Vote for Babylon party was deemed to be a threat and someone has gone to great lengths and expense to keep us off the ballot. This should be extremely disturbing to every citizen to this village. When will they try to silence you?

DOCS.GOOGLE.COM

Letter from VFB 2/22/2021

February 22, 2021 To all Babylon Village residents, As you may know...

6/23/2021

(1) Vote for Babylon - Posts | Facebook



Like

Comment

Share

All Comments



Write a comment...



Andrew Cone

Your team filled out the paperwork incorrect on an election to run a village. They had plenty of people who could look to make sure it was correct. It should be disturbing that with all the help that was around them they failed.

Like · Reply · 17w



13 Replies



Annette Wanderer

Has the Party filed a Freedom of Information Request to find out who the "concerned citizen" is?

Like · Reply · 17w



1 Reply



Eddie May

Funny how their campaign literature call themselves the experience party when 3 candidates all have less than 3 months on the board.

Like · Reply · 17w



9 Replies



Kelly Peckholdt

We are so looking forward to the opportunity to serve you, the village residents. You deserve a choice!



Vote for Babylon

Learn More

Like

Message

Like · Reply · 17w



JC Jennifer

Definitely will be writing all your names on the ballot!

Like · Reply · 17w



Kathy Collins Hoffman

Shout from the rooftops, share with everyone you know...do not allow them to silence you.

Like · Reply · 17w · Edited



Oo Jao

The BBP lost any credibility with this move. Babylon village residents deserve a choice!

Like · Reply · 17w



Dennis Mulhall

I am more determined to see ur team elected.

Like · Reply · 17w



Christine Chapman

Some very petty and pathetic people out there. This guy is a "neighbor" of mine.

6/23/2021

(1) Vote for Babylon - Posts | Facebook



John Lepper

Corruption at every level of government... These people are dirty and pathetic!!! Happy to help any way I can... love to share my story and my experiences with the BBP... in fact I have the video depositions of the former BBP everyone can watch it for themselves! I'm not afraid to share any and ALL of the public records involving me! Can't say the same for the BBP! Send me your email and I'll send you a copy

Like · Reply · 17w · Edited

Write a comment...

OTHER POSTS



Vote for Babylon

March 17 ·

On behalf of our campaign team, we want to thank the record number of Babylon residents who not only took the time to come out and vote last night but made the extra effort to learn the process and physically write our names on the ballot. Never in Babylon history has this effort been made and we owe you all tremendous thanks.

We also received tremendous support along the way and met some really caring people with amazing suggestions. We hope to keep up this momentum of cit... See More



39

20 Comments 4 Shares

Like

Comment

Share

Most Relevant



Write a comment...



Becca Kennedy Seibert Nast

It would be so great if you all take the next few years to get more experience with local government processes

Like · Reply · 13w

1

View 11 more comments



Vote for Babylon is in Babylon, New York.

March 16 ·

Voted!!! So proud to have voted and to be a part of this election! Thank you all from the bottom of my heart for your amazing support! Please VOTE today!... See More

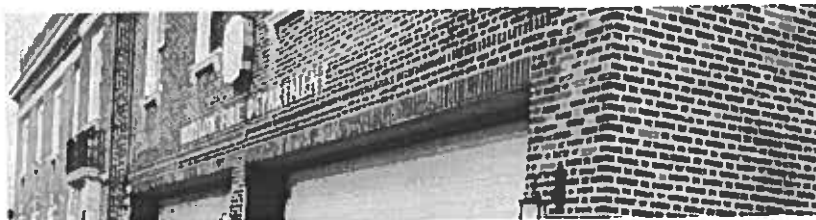


EXHIBIT “Z”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011
JMA, AYS

Plaintiffs,

AFFIDAVIT

- against -

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

**Judge: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, A., U.S.M.J.)**

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF)

Mary Adams, being duly sworn deposes and says:

1. I am a defendant in this litigation and make this affidavit in support of the motions to dismiss the complaint.
2. I served as Village Trustee from June 15, 2016, until the untimely death of the late Mayor Ralph Scordino. I was inaugurated to the office of Mayor of the Village of Babylon on October 30, 2020, and I have served as Mayor since October 30, 2020.
3. I have held no other office or position with the Village of Babylon other than my

positions as Trustee and Mayor. I am familiar with the claims of the Plaintiffs and make this affidavit based on personal knowledge of my activity related to the subject building structure on the property of John and Noelle Lepper that they call a tree house.

4. I have had no discussion with John or Noelle Lepper about the tree house or any matters related to the tree house.

5. In my role as Trustee and Mayor, I was kept advised of the status of the matter involving John Lepper by our counsel Gerard Glass and by Stephen Fellman. Both Gerard Glass, who had served as Village Attorney, and Stephen Fellman, who has been serving as building inspector, have reported to me in their official capacities while I am Mayor. Before I became Mayor they reported to the late Ralph Scordino.

6. All action undertaken by the Village of Babylon through the building department or through the prosecution of tickets undertaken by the attorney for the Village of Babylon was to enforce codes related to the tree house alleged in the complaint. I have been advised that some tickets issued to Mr. Lepper were dismissed on appeal on procedural grounds. I know of no wrongful acts or omissions on the part of any defendant in this case as alleged in the complaint of the Plaintiffs.

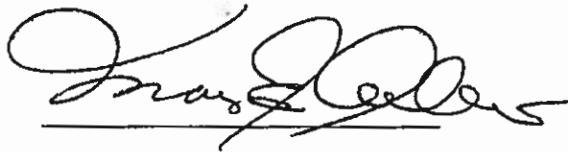
7. I am told that Mr. Lepper complained of reports made about him to the fire department and the police department. I have not made any reports or complaints concerning Mr. Lepper to the fire department or to the police department. I was not consulted about making any such reports and no one has requested that I participate or make any decisions about reporting or complaining about Mr. Lepper to the police department or the fire department or any other agency.

8. John Lepper has appeared at public meetings and made statements. At times, his

conduct was belligerent in tone. The office of Code Enforcement for the Village of Babylon has requested police presence at board meetings, but no report was made to the police specifically about John Lepper. Rather, police had been called to avoid conflict during the meetings.

9. I am advised that a complaint was filed by John Lepper in January 2021. No process server and no one on behalf of John Lepper has handed me or served me with a summons or complaint in 2021 with reference to this matter. I have not waived service of the summons and complaint.

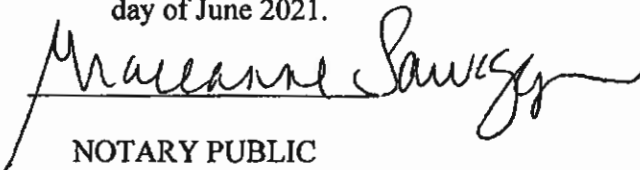
10. The Village does not waive proper service of the summons and complaint.



Mary Adams

Sworn to before me this

day of June 2021.


NOTARY PUBLIC

Graceanne Sawczyn
Notary Public, State of New York
No. 01SA6225053
Qualified in Suffolk County

7/19/22

EXHIBIT “AA”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011
JMA, AYS

Plaintiffs,

AFFIDAVIT

- against -

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

**Judge: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, A., U.S.M.J.)**

Defendants.

-----X
STATE OF NEW YORK)
) ss.
COUNTY OF *Suffolk*)

Robyn Silvestri, being duly sworn deposes and says:

1. I am a defendant in this litigation and make this affidavit in support of the
motions to dismiss the complaint.

2, I have been a Trustee with the Village of Babylon since July 2018 and currently serve as Trustee.

3, I have held no other office or position with the Village of Babylon other than my position as Trustee. I am familiar with the claims of the Plaintiffs and make this affidavit based on personal knowledge of my activity related to the subject building structure on the property of John and Noelle Lepper that they call a tree house.

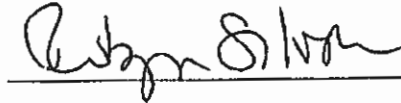
4, I have had no discussion with John or Noelle Lepper about the tree house or any matters related to the tree house.

5. In my role as Trustee, I was kept advised of the status of the matter involving John Lepper by our counsel Gerard Glass.

6. All action undertaken by the Village of Babylon through the building department or through the prosecution of tickets undertaken by the attorney for the Village of Babylon was to enforce codes related to the tree house alleged in the complaint. I have been advised that some tickets issued to Mr. Lepper were dismissed on appeal on procedural grounds. I know of no wrongful acts or omissions on the part of any defendant in this case as alleged in the complaint of the Plaintiffs.

7. I am told that Mr. Lepper complained of reports made about him to the fire department and the police department. I have not made any reports or complaints concerning Mr. Lepper to the fire department or to the police department. I was not consulted about making any such reports and no one has requested that I participate or make any decisions about reporting or complaining about Mr. Lepper to the police department or the fire department or any other agency.

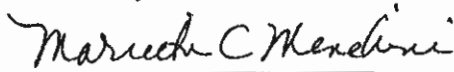
8. I am advised that a complaint was filed by John Lepper in January 2021. No process server and no one on behalf of John Lepper has handed me or served me with a summons or complaint in 2021 with reference to this matter. I have not waived service of the summons and complaint.



Robyn Silvestri

Sworn to before me this

22 day of June 2021.



NOTARY PUBLIC

MARIETTA C MENCHINI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6239065
Qualified in Suffolk County
My Commission Expires April 18, 2023

EXHIBIT “AB”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011
JMA, AYS

Plaintiffs,

AFFIDAVIT

- against -

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

**Judge: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, A., U.S.M.J.)**

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Jean Marie Parker being duly sworn deposes and says:

1. I am not a named party to this litigation.
2. I serve and have served as Village Clerk for the Village of Babylon since June 25,
2018.

3. On January 4, 2021, one of my office staff, Jennifer Lister, brought a packet of papers to me that was handed to her at the front door of Village Hall. I looked at the papers and recognized them to be copies of a summons and complaint with docket number CV-21 0014.

4. I have not designated any person to accept service of process on my behalf.

5. Neither John Lepper nor anyone on his behalf handed me papers with docket number CV-21 0014.

6. I had asked Jennifer Lister, who received papers at the door, if John Lepper had handed her the papers. She did not know. I showed her a photograph of John Lepper that I found on the internet. She recognized the photograph of John Lepper to be the man who had handed her the papers.

7. There is no record of attempted service of the summons and complaint under docket number CV-21 0014 on anyone in my office other than the papers handed to Jennifer Lister on January 4, 2021.



Jean Marie Parker

Sworn to before me this

23 day of June 2021.



NOTARY PUBLIC

MARIETTA C. MENCHINI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6239068
Qualified in Suffolk County
Commission Expires April 18, 2023

EXHIBIT “AC”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN LEPPER and NOELLE LEPPER, individually
and as parents and natural guardians of their infant
children, B.J.L. and B.I.,

Docket No.: 2:18-cv-07011
JMA, AYS

Plaintiffs,

AFFIDAVIT

- against -

VILLAGE OF BABYLON; and, RALPH
SCORDINO, Mayor, KEVIN MULDOWNEY,
Deputy Mayor, ROBYN SILVESTRI, Village
Trustee, TONY DAVIDA, Village Trustee, MARY
ADAMS, Village Trustee; STEPHEN FELLMAN,
Village of Babylon Building Inspector; SUZANNE
SCHETTINO, Department of Public Works;
GERARD GLASS, Esq., Village of Babylon
Attorney; DEBORAH LONGO, Planning Board,
Village of Babylon, each individually and in their
official capacity, and John and/or Jane Doe,
unnamed, unidentified complainants,

**Judge: Honorable
Joan M. Azrack, U.S.D.J.
(Shields, A., U.S.M.J.)**

Defendants.
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Jennifer Lister being duly sworn deposes and says:

1. I am not a party to this litigation.
2. I am an office assistant to the Babylon Village Clerk, Jean Marie Parker, and I started my employment with the Village of Babylon in October 2020.
3. On January 4, 2021, I was working at Village Hall in the Village Clerk's Office when someone called the office and spoke to me on the telephone. A man, who did not identify

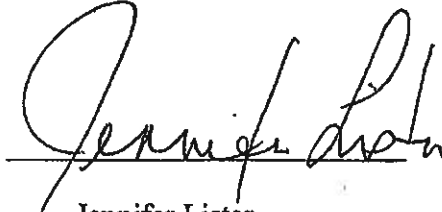
himself, said he had papers to drop off and did not identify what type of papers they were. I answered the door and was handed a packet of papers. The man, who was wearing a COVID mask, told me that the papers were for everyone listed. I did not know that he was handing me copies of a summons and complaint at that time.

4. I am not and have not been designated as a party authorized to accept service of process on behalf of the Village of Babylon, the Village Clerk or any parties to this lawsuit.

5. I did not represent to the man that I could accept service on behalf of any party.

6. After I brought the papers into the office, I gave the papers to Jean Marie Parker. Ms. Parker asked me if the man who gave me the papers was John Lepper. I had not seen him before, so I did not know who he was. Ms. Parker then showed me a picture of John Lepper taken from the internet. Underneath the internet photograph was the name John Lepper. The man who handed me the papers looked like the internet photograph of John Lepper.

7. Another man with a clipboard stood behind Mr. Lepper at the time Mr. Lepper handed me the packet of papers. I do not know who that man is.



Jennifer Lister

Sworn to before me this

23 day of June 2021.



NOTARY PUBLIC

MARIETTA C MENCHINI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6239065
Qualified in Suffolk County
My Commission Expires April 18, 2023